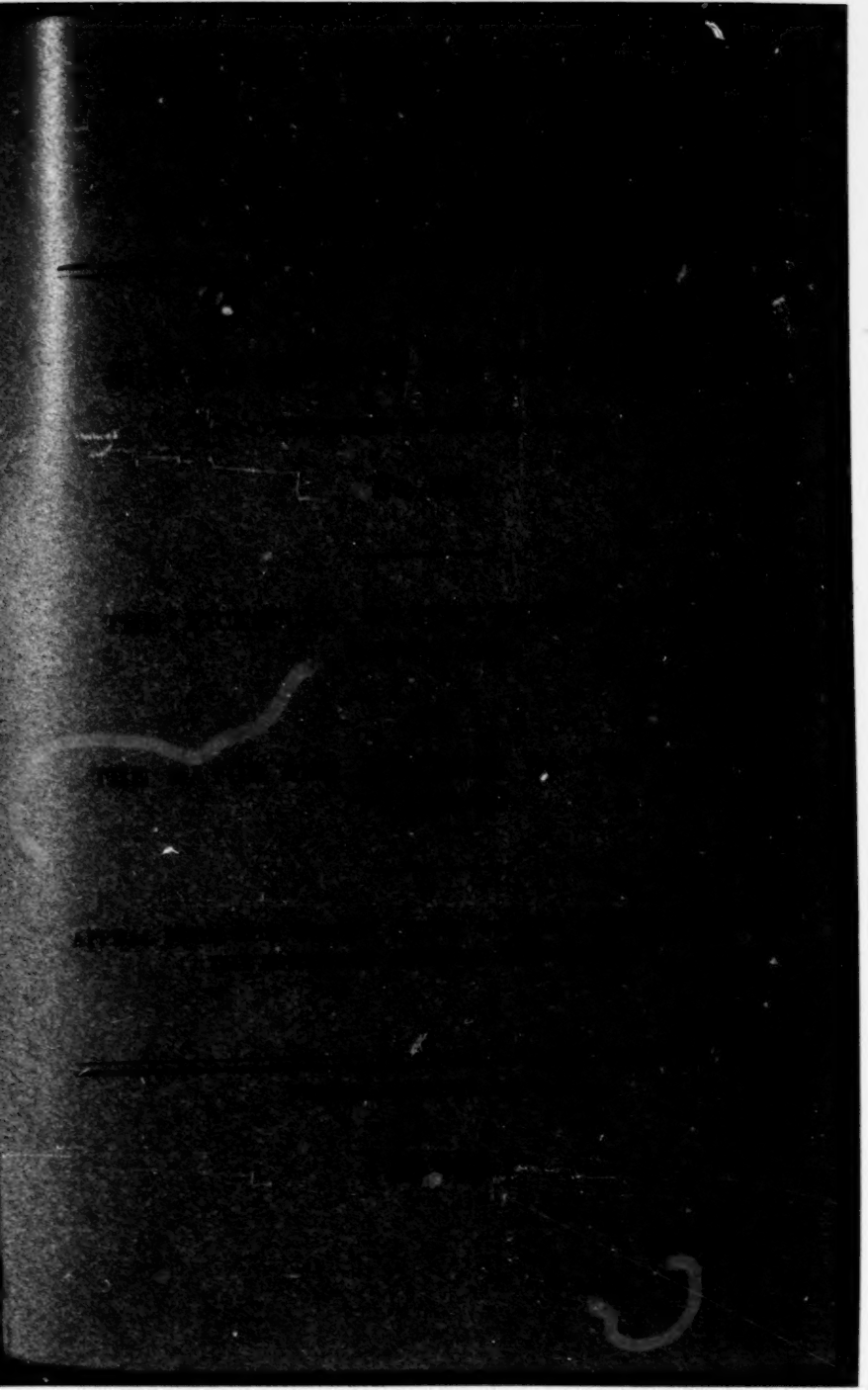

(18,245.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No 392.

THE VICKSBURG WATER WORKS COMPANY, APPELLANT,

vs.

THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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a UNITED STATES OF AMERICA, } *To wit:*
District of Mississippi, }

At a district court of the United States for the western division of the southern district of Mississippi, begun and held at the courthouse in the city of Vicksburg, on the 1st Monday of July, 1901, beginning on the 1st day of the same month in the year of our Lord, one thousand nine hundred and one. Present the Honorable H. C. Niles, circuit judge of the western division of the southern district of Mississippi. Among other things were the following to wit.

1 In the Circuit Court of the United States in and for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, Defendant.

To the honorable the judges of the circuit court of the United States in and for the western division of the southern district of Mississippi:

Humbly complaining, your orator The Vicksburg Water Works Company, a corporation duly organized and existing under the laws of Mississippi, and a citizen of said State, and having its principal place of business in Vicksburg therein, brings this its bill of complaint against the Mayor and Aldermen of the City of Vicksburg, a municipal corporation organized and existing under the laws of Mississippi, and located in Warren county in said State.

1st. And thereupon your orator, by the undersigned, its solicitors in this behalf, complains and says that, it and said defendant are organized corporations as aforesaid and that on the 18th day of March, 1886 the said City of Vicksburg, caused its charter to be amended by the legislature of the State of Mississippi in words and figures as follows, to wit: "To provided for the erection and maintenance of a system of water works to supply said city with water and to that end to contract with a party or parties who shall build and operate water works," whereby said city was empowered to provide and contract for a system of water works. Which said act was approved on the 18th day of March, 1886, and is set out in full in the acts of 1886 of the legislature of the State of Mississippi, page 695, reference to which is hereby made.

2nd. Your orator further shows that on the 19th day of
2 November 1886 the said City of Vicksburg received competitive bids for the best terms and conditions for the city and for the franchise rights, etc., S. R. Bullock & Company and other bidders submitting bids; and said bids or offers were referred to the Mayor and Aldermen of the City of Vicksburg who thereupon made an investigation of the propositions offered by the respective competitive bidders, and according to the minutes of its proceedings

on — day of —— 1886 accepted the proposition of S. R. Bullock & Company, their associates, successors and assigns, as shown per minute book — of the proceedings of the board of mayor & aldermen. A copy of which minutes is hereto filed and made a part hereof, and marked Exhibit "A," to this bill. And on the — day of —— 188–, the Mayor and Aldermen of the City of Vicksburg, pursuant to said act of the legislature of Mississippi, duly passed and adopted an ordinance for the construction and maintenance of a system of water works, and thereby entered into a contract with said said Bullock & Company therefor, a copy of which said ordinance and contract entered into between Bullock & Company, their associates, successors and assigns and defendant is hereto attached and marked Exhibit "B" and made a part hereof.

3rd. Your orator further shows that in accordance with the said contract and ordinance and as provided therein, S. R. Bullock & Company, were empowered to organize or create a water works company, and to sell or assign said contract and ordinance to any water company who would supply said city and its inhabitants in accordance with the terms and provisions of said contract and accept the terms and provisions thereof.

4th. Your orator further shows that said Bullock & Company on — day of —— 1887, chartered and organized under the laws of Mississippi, the Vicksburg Water Supply Company, a corporation, a copy of said charter is hereto attached and marked Exhibit "C" and made a part hereof. And on the 1st day of March 1887, said Bullock & Company assigned and sold said contract to the said Vicksburg Water Supply Company, now and at all times a going concern, and doing business in Vicksburg, Warren county, Mississippi. A copy of said assignment is herewith filed and marked Exhibit "D" and made a part hereof. And on the — day
3 of —— in accordance with the terms and provisions of said contract and ordinance the said supply company being the assignee and *bona fide* owner of the same, and required by the agreement therein contained, gave defendant notice, accepting the terms and conditions of said ordinance and contract which notice is duly recorded on page — of the minute book, numbered — of said defendant, a copy of which notice is hereto filed and marked Exhibit "E," and made a part hereof.

Said notice and acceptance of said ordinance was received and an entry thereof was made in its records, a copy of which entry is hereto attached and marked Exhibit "F" and made a part hereof.

5th. Your orator further shows that said Bullock & Company proceeded to build and construct said water plant; as per specifications in said ordinance, and did build and complete said water-works plant as specified in said ordinance, on or about the — day of ——, 188–. And after inspection of said water-works plant by defendant, The City, on the — day of ——, 188–, the water-works plant was accepted by said defendant, The City, as having been fully completed in every respect, and having fully complied with all the provisions of said ordinance and contract in every respect.

6th. Your orator further shows that since the completion and ac-

ceptance of said water works, which is a period of about fourteen years, there has never been any complaint of any kind or character whatsoever, by word or resolution by the defendant, The City, or otherwise, that the water compaay had in any manner forfeited or violated the ordinance or contract with the defendant, The City; on the contrary, said defendant, The City, understood and knew that said water company was so faithful in and with respect to execution of its part of the ordinance that said defendant, The City, without question, issued and paid the said water company semi-annually, the *rpice* and sum of the rental stipulated in said ordinance up to the time the city fully decided it wanted a water works of its own, which was on or about July, 1900.

7th. Your orator further shows that heretofore on the — 4 day of March, 1887, said supply company duly made, executed and delivered a deed of trust conveying all its franchises, ordinances and contracts, together with all other property of whatsoever kind or nature, then or thereafter acquired, to secure the payment of its issue, $250,000 of first-mortgage bonds; and said deed of trust was thereupon duly recorded in said Warren county; and a copy -hereof is hereto attached and marked Exhibit "X" and made a part hereof.

8th. And therefore default having been made in the payment of interest on said bonds, the same was foreclosed on the 8th day of August 1900, and all the said franchise, ordinances, contracts and property conveyed in said deed were sold, pursuant to the terms of said deed of trust, to the Vicksburg Water Works Company, which is evidence- by deed made and executed by trustee, recorded in Book — page — of the records of deed- of Warren county, Mississippi. The said Vicksburg Water Works Company is a corporation duly organized under the laws of Mississippi, and doing business in said city of Vicksburg, and the owner of said water-works property and operating the same.

9th. Your orator further shows that on the 18th day of October, 1900, the said Vicksburg Water Supply Company executed a quit-claim deed to the said Vicksburg Water Works Company, conveying all rights, titles and interest it might have or may hereafter acquire in said water-works property franchises, ordinances and contracts; a copy of which deed is hereto attached and marked Exhibit "G" and made a part hereof.

10. And in pursuance of the purchase by said Vicksburg Water Works Company of the said property, ordinances, franchises and contracts, the said Vicksburg Water Works Company gave the said city notice in writing of said purchase and assignment, and filed with said city its written acceptance of the terms and provisions of said ordinance; a copy of which notice and acceptance is hereto attached and marked Exhibit "H" and made a part hereof. And at the same time, said company filed with and furnished to said city, documentary evidence of its title and ownership of said franchises, ordinance, contracts and property.

11th. Your orator further shows that the said city of Vicksburg

has since the completion and acceptance of the said water
5 works as aforesaid, continuously received and used the water as furnished by said water works and paid for the same during a period of about fourteen years as aforesaid without question or complaint; and said water has at all times been and is now good and wholesome for public and private use and an adequate supply for the needs of said city and its inhabitants; that said water so furnished from the time said city first received and accepted the same up to the present date is, and has at all times been, the same character and supply of water as when first received and accepted by said city and is and at all times has been in accordance with the said ordinance and contract entered into with said city by said S. R. Bullock & Company, the said Vicksburg Water Supply Company and the said Vicksburg Water Works Company; and the pressure maintained has at all times been, and is now greater than required by said ordinance and contract.

12th. And there has never been any complaint during said period of about fourteen years as to the character or quality of the water, nor as to the pressure nor as to any other matter from the said city nor any official or other notice that said water works company was not complying in every respect in accordance with said ordinance. But after said city desired to own its own water works and it was ascertained by said city that your orator, The Vicksburg Water Works Company was the owner of said first-mortgage bonds, and that by virtue of the sale under the said deed of trust it would become the owner of the said water works on the 8th day of August 1900, said city without any notice to said water works company that said city claimed said company was not complying with the terms and provisions of said ordinance and contract arbitrarily, unjustly, and illegally proceeded, as hereinafter set out, to pass and adopt as ordinance and resolution, assuming to abrogate and take away the franchises and contract rights of your orator.

13th. Your orator further shows that the said city and its officers confederating and conspiring to injure and destroy the credit of the said Vicksburg Water Works Company and to destroy the value of
its property assumed to abrogate and take away the fran-
6 chises and contract rights of said company, while denying its (said city's) liability to pay for the water used by it as provided in said contract and ordinance, and persistently and unlawfully endeavored to disable said company from carrying on its business and to destroy its credit and the value of its property and to coerce said company to sell its water works to the city for an inadequate price.

14th. Your orator further shows that the value of its property is in a large measure dependent upon its franchises and its contracts to supply said city with water, and that the value thereof is seriously impaired by the unjust and unlawful action of said city in assuming to abrogate and take away its franchises and contract rights as aforesaid.

15th. Your orator further shows that the said unlawful, unjust and illegal acts of said city and its officers are being done partly pur-

suant to an act of the legislature of Mississippi enacted on the 9th day of March 1900, entitled "An act to authorize the mayor and aldermen of the city of Vicksburg to issue bonds to the amount of $375,000, to purchase or construct, equip and maintain a water-works system: construct and establish a sewerage system, to purchase grounds for, erect and equip a city hall; construct the necessary buildings for a hospital medi-al college and for other purposes." Said act is contained in Acts of 1900 page 180, reference to which is hereby made, whereby said legislature assumed to annul and abrogate the aforesaid ordinance and contract said city entered into with said Bullock and Company and their assigns, in this, that by reason of said ordinance and contract, said city has no right within the period of thirty years to engage in the business of supplying water to the inhabitants of said city in competition with said Bullock & Company, or their assigns, notwithstanding which, said act authorized and permits said city to construct and maintain water works for said purpose, if unable to buy the water works of said Vicksburg Water Works Company at the arbitrary and inadequate price fixed by the said legislative act, and in pursuance of said act, and as required by its terms and conditions, an election was held in said city on the — day of ——, 1900, at which it was voted by a majority of the votes
7 cast at said election, that said city should issue its bonds in the sum of $150,000 to buy or construct water works for said city, all of which acts and doings in the part of said city and the legislature of Mississippi, impaired the credit of said Vicksburg Water Works Company and depreciated the value of its property, and tend to disable it from carrying on its business, and to coerce it to sell its property for such arbitrary and inadequate price and cast a cloud upon its title, franchise and rights; and said act, ordinance and resolution and each of them are in contravention of the Constitution of the United States, in this, that they impair the obligations of said contract between said city and said Bullock & Company and their assigns.

16th. Your orator further shows, as hereinbefore referred to, that on the 7th day of November, 1900, said city passed a resolution and ordinance assuming to abrogate and take away the franchises and contracts rights of the said Vicksburg Water Work Company, a copy of which is hereto attached, marked Exhibit "1" and made a part hereof.

17th. Your orator further shows that if said act of March, 1900, and said resolution and ordinance adopted on said 7th day of November, 1900, as aforesaid, are permitted to stand, they will take away one of the most valuable assets of said Vicksburg Water Works Company, which will so materially impair its value as to wreck and ruin said water works in the hands of your orator, The Vicksburg Water Works Company.

18th. Your orator further shows that heretofore during the election to be held on the question of bonding th- city for water works, sewerage, etc., as aforesaid, it was deemed advisable to have appointed an advisory board in conjunction with said mayor and aldermen of the city of Vicksburg as to the wisdom of the expenditure of

said bonds; that said advisory board and mayor and aldermen passed a resolution and gave a copy of same to your orator, requesting a reply. A copy of said resolution is hereto attached, marked Exhibit "J" and made a part hereof.

19th. Your orator further avers that the Vicksburg Water Works Company took possession of said water works on August 15th, 1900, and that the city election was held on December 6th, 1900, for city officers, and during the period between August 15th and December 6th, 1900, many of the
8 municipal office holders and seekers from the mayor of said city down, dragged the water works into politics without the consent and wishes of your orator, and openly stated and published in the newspapers in the city, that if elected they would bring suit to cancel the contract with the water company, and charged that your orator had taken snap judgment on the city in buying said water works; copies of said publications are hereto attached marked Exhibits — and made a part hereof. All of which statements and publications were harmful and injurious to your orator, greatly hampering it in carrying on its business.

20th. Your orator alleges the fact to be that the incorporators of said Vicksburg Water Works Company commenced negotiations to buy the water plant in the fall of the year 1899, and on January 25th, 1900, made a proposition in writing to buy the plant, which date was prior *ot* the introduction of said act in the legislature, authorizing the city to buy or construct a water-works system, and your orator never knew that the city had any desire whatever to own a water-works *palnt* of her own at the time of such negotiations.

21st. Your orator further shows that during said municipal elections rumors of damaging effect and that were utterly false began to travel the streets of defendant, The City, and were poured into the uninformed public ear, and met great favor with the newspapers of the city having a wide and influential circulation in said city, and through their columns the papers would themselves, and also by its citizens, some of whom were candidates for office, write inflam-atory and untruthful articles about your orator, all of which has given birth to an unjust public disfavor an- unrighteous prejudice, which said rumors and articles have greatly injured your orator, and your orator is informed, believes and charges the fact to be that said rumors and articles were originated and circulated by officers, agents and confederates of said city, pursuant to said conspiracy and confederacy against your orator.

22nd. Your orator further shows that *sone* time after the Vicksburg Water Works Company had bought the water works, plant- and after it was well known that the city wanted the water
9 works, or one of her own, one of the leading citizens of Vicksburg, for himself and associates offered to buy the water works from your orator at a price exceeding $150,000, and your orator charges the fact to be that this same citizen is today one of the advisory board, and that he is acting in that capacity with said board in conjunction with the mayor and alder*eman*, to coerce and force

your orator to sell said water works at a price less than what he himself and associates offered to pay your orator.

23rd. Your orator further shows that suit was commenced by the City of Vicksburg in the chancery court of Warren county, Mississippi, to have declared void, said ordinance or contract your orator has with the city, at the instigation of said board of mayor and aldermen and said advisory board, and in about sixty days' time from the filing of said suit your orator received a communication from said associates of said leading citizen to know if your orator now cared to sell the water works. Whether or not said leading citizen and associates are confederating in conjunction with said mayor and aldermen in said suit, your orator is unable to state. A petition for the removal of said suit to this court was filed by complainant herein because it involved a Federal question and the same is now pending in this court upon motion to remand. A copy of the bill of complainant is hereto attached and marked Exhibit "Y" and made a part hereof.

24th. Your orator further shows that on the 22nd day of February, 1890, the defendant caused to be passed an act of the legislature of the State of Mississippi, entitled "To provide means for the construction of a sewerage system in the city of Vicksburg and to issue bonds therefor," which act will be found on page 507 of the Sheet Acts of said body, reference to which is hereby made, and this act has never been repealed by any subsequent legislation of Mississippi.

25th. On the 9th day of March, at the instance of the defendant, the legislature of the State of Mississippi passed an act as aforesaid entitled "An act to authorize the mayor & aldermen of the city of Vicksburg to issue bonds to the amount of $375,000 to purchase or construct, equip and maintain a water-works system, etc.," while said contract and ordinance entered into with said defendant, The City, was still in force, and the conditions thereof being performed by both parties without compiaint from either. Your orator charges that said act of March, 1900, is unconstitutional for many reasons, which will be shown to the court on the hearing of this cause, meaning as follows to wit:—

1st. Because it arbitrarily places the prices and value upon another's property in which defendant has no interest.

2nd. Because the legislature of the State has by said act passed an *ex post facto* law impairing the obligations of a contract.

3rd. Because said act is in conflict with the act of 1890, page 507 providing for the construction of a sewerage system, because the acts of 1900 does not in accordance with section — of the constitution of Mississippi repeal said act of 1890.

4th. Because said act of 1900 is local in character, when the provision contained therein could be provided for by general law.

5th. Because it abuses the credit of the city if these bonds are permitted to be issued and sold.

26th. Your orator would respectfully represent that about 1870, the defendant constructed a large underground gutter of about five feet in diameter on Washington street of defendant, and through

the most populous part thereof, for about one-half mile for the purpose of conducting away the surface water of said defendant into the Mississippi river, and which was used for that purpose solely, until afterwards as aforesaid in 1887 as aforesaid, the Vicksburg Water Supply Company as aforesaid, built its pumping station and intake pipes, on the Mississippi river below the defendant which arranges the pumping station of your orator with reference to the mouth of this gutter so as to locate it about two miles up said river above said station. Some time after the Vicksburg Water Supply Company was put into operation, the citizens and inhabitants of defendant along or near Washington street began to connect the water-closets of their residences, hotels and stores with this gutter through the acquiescence and consent of defendant, to that extent that until it has been
11 converted into a partial sewer for said street for said water-closet- of said residences stores and hotels, and if defendant permits a general connection with this gutter for such purposes the sewerage thereof will pollute the waters of said river to that extent so as to make it unfit for domestic and drinking purposes as provided by said contract and ordinance with said city, and unless the use thereof is prohibited by defendant your orator will be compelled to cut off and prevent the use of its water for such closet and sewer purposes by said residences hotels, stores, in order that good and wholesome water may be delivered to said city and its inhabitants as is being now delivered.

27th. Your orator further charges that it has no adequate remedy at law for the damages which it has sustained by reason of the aforesaid conspiracy and unlawful acts of the defendant and others, and also that it has no remedy at law to enjoin and restrain a continuation by defendant of said unlawful actings and doings; and it charges that the continuance of said actings and doings will injure and damage your orator in the sum exceeding the amount of ten thousand dollars, and that the acts of defendant aforesaid have already damaged the complainant in its business in the sum exceeding said amount.

28th. Your orator now specially shows that said ordinance or franchise Exhibit "B" provided that the defendant, The City shall pay to your orator semi-annually to wit: January 1st and July 1st of each year the price or prices named in said ordinance for the fire-hydrants as stipulated and set out therein.

29th. Your orator especially complaining shows that the defendant, The City, is now refusing to pay your orator the amount due and payable on January 1st 1901, and only offers to pay an inadequate price or amount and under specific conditions, that if accepted by your orator, would commit your orator to a false position with reference to a contract with the city; that the defendant, The City by this scheme is confederating, conspiring and endeavoring to coerce and force your orator to commit an act whereby the ordinance would be annulled, notwithstanding the fact that defendant has already collected from the tax-payers of defendant the full amount with which to pay this demand.

12 30th. Your orator further shows that we have, and did offer and now offer to the defendant, The City, in writing assuring the city that the payment for said fire-hydrants due on January 1st, 1901, as stipulated in said ordinance should in nowise prejudice said city in a suit or suits whatever pertaining to this matter; your orator agreed to do this, that, in this way your orator would be able to maintain itself and continue to furnish water for fire protection to said city, and that we were, and are now willing to do so, but your orator especially alleges that it cannot keep up the enormous expenses and pay fixed charges and maintain itself, and continue to deliver water for fire protection etc., unless the defendant, The City pays for the water as received and used by it. A copy of the proposition made to water committee, city attorney and board of aldermen is hereto attached and marked Exhibit "K," and made a part hereof.

31st. Your orator further shows that the water committee (after the bill was referred back to them) called a special meeting of the board of mayor and aldermen on February 7th, 1901, and made the following report to wit:

"*Report of the Committee of Water Works upon the Matter of the Accounts of the Vicksburg Water Works Company Referred to It.*

To the honorable board of mayor and aleermen.

GENTLEMEN: Your committee would respectfully report in reference to the above subject that they have fully considered the question of the accounts presented by said company.

On the first day of October, 1900, the board of mayor and aldermen passed a resolution denying any liability to said company by virtue of the contract entered into with Samuel R. Bullock and Company, but for the use of hydrants they would pay a reasonable and just compensation. Our powers therefore in the premises are limited to a report based upon our idea as to what is reasonable and just. We have deemed it unnecessary that we should go into an exact estimate of what is reasonable and just and therefore have proposed to said company that we will pay them from the 15th day of August, up to the day of said resolution at the rate which had been before then paid, and since that time we will pay them at the rate
13 of $50.00 per hydrant, which we consider a most liberal rate; it being understood however that this arrangement should not be deemed conclusive as to what is reasonable and right to pay in the future, and after the termination of the pending suit; neither should these payments be deemed in any way a waiver of the rights of the city in the premises.

(Signed) D. A. CAMPBELL,
T. M. CAUGHLIN,
W. O. SMITH,
Committee."

32. Your orator would show that said board of mayor and aldermen received and adopted the water committee's report in words and

figures as follows: "That the accounts be allowed on the basis and conditions of the committee's report." Your orator respectfully shows that said report of the water committee and the adoption of the same by the board of mayor and aldermen is so worded and hedged about so that if your orator should accept the payment as stipulated therein, it would acknowledge thereby or break the contract, in this, the defendant, The City, reserving to itself all the rights in words and figures as follows: "It being understood, however, that this arrangement should not be deemed conclusive as to what is reasonable and right to pay in the future, and after the termination of the pending suit, neither should these payments be deemed in any way a waiver of the rights of the city in the premises." But no rights are reserved to your orator, and therefore, as before stated, if partial payment was accepted under the terms and conditions specified in said committee's report and mayor & aldermen's adoption, your orator would thereby be doing an act that could and would be construed the ending or breaking of the contract.

33. Your orator now shows that it cannot accept the proffered partial payment under the terms and conditions as specified in said water committee's report and mayor and aldermen's adoption, and that unless the defendant, The City, pays your orator, your orator will be unable to maintain itself and keep up the great expenses
14 necessary to operate such a plant, discharge fixed charges as aforesaid, and while your orator is willing and anxious to furnish water for fire protection, etc., and fully carry out said contract, and have offered so to do, and now offer so to do, but as before stated if defendant, The City, continues to refuse to pay for said water on a basis that each and all rights both for your orator and defendant, The City, may be equally and equitably reserved until this honorable court can decide the case upon its merits, your orator will be unable to maintain itself and furnish water for fire protection, etc.

Wherefore, forasmuch as your orator can have no adequate relief at law but only in a court of equity, where matters of this sort are cognizable and relieveable, and to the end that the defendant may be required to answer, but not under oath (answer under oath being hereby expressly waived) each and all of the allegations hereinbefore stated, and may be required to desist the further infringement and invasion of your orator's lawful rights and may be decreed from constructing or acquiring and operating a system of water works in competition with your orator's water works, and to the end that your orator may have such other and further relief as unto your honors may seem proper, wherefore your orator prays:

I. That defendant may be compelled to answer the premises, (not under oath).

II. That the defendant may be enjoined, perpetually, from assuming to abrogate and take away the franchises and contract rights of complainant and from endeavoring to disable complainant from carrying on its business and to destroy its credit and the value of its property, and to coerce said complainant to sell its water works

to defendant for an inadequate price, and that defendant may be enjoined and restrained from otherwise carrying on the unlawful conspiracy aforesaid entered into by it, and from doing any other illegal and unlawful act in furtherance of said unlawful conspiracy, and that said act of the legislature of Mississippi adopted on the 9th of March, 1900, and said resolution and ordinance adopted
15 and passed by said city on the 7th day of November, 1900, be decreed to impair the obligations of said contract between said city and said Bullock & Company and their assigns, and to cast a cloud upon the title, franchises and rights of complainant, and to be invalid and of no effect as against your orator.

III. May it please your honors to grant unto your orator a writ of injunction issuing out of this honorable court, under the seal thereof, directed to the defendant, its officers, attorneys and servants, and each of them enjoining and restraining them from assuming to abrogate and take away the franchises and contract rights of complainant, and from endeavoring to disable complainant from carrying on its business and to coerce said complainant to sell its water works to defendant for the said inadequate and arbitrary price and from otherwise carrying on the unlawful conspiracy aforesaid entered into, and from doing any other illegal and unlawful act in furtherance of said unlawful conspiracy as well as for a decree requiring and compelling them not to permit the inhabitants along Washington street of said city from using said gutter or culvert as a sewer.

IV. May it please your honors to grant unto your orator not only a writ of injunction, but furthermore a writ of *subpœna as respondendum* directed to the defendant, namely The Mayor & Aldermen of the City of Vicksburg (corporation as aforesaid); and thereby to command them upon a day certain therein named, to be and appear in this honorable court to answer the premises and to perform and abide by such further order of the court as to your honors may seem meet, to the end that you- orator may have full and adequate relief in the premises.

V. Your orator would further pray for a decree against defendant, for all monies due it under said ordinance with 6 % interest per annum thereon from the date of their respective maturities until it is paid.

VI. The premises considered, your orator therefore respectfully asks this honorable court for an injunction restraining defendant from perpetuating any minutes, or ordinances or resolutions
16 of its own whereby it denies liability or seeks to annul or refuses to pay your orator contract price for water used by them as per the ordinance price and to continue to do so until this cause is heard upon its merits and that the rights of all parties concerned may be preserved.

VII. May it please your honors to further grant to your orator such other and further relief as the facts aforesaid may demand, and as may be in conformity with equity and good conscience and in accord with the practice in this honorable court as a court of equity.

And your orator will ever pray, etc.

VICKSBURG WATER WORKS COMPANY,
By S. S. HUDSON &
A. N. EDWARDS, *Its Solicitors.*

STATE OF MISSISSIPPI,
Western Division of the Southern Judicial District of Mississippi, City of Vicksburg.

M. O. Crumpler of lawful age being duly sworn on his oath says that he is secretary, treasurer and manager of Vicksburg Water Works Company at the city of Vicksburg, Mississippi, and that the matters and facts stated in the foregoing bill of complaint of the Vicksburg Water Works Company are true, except as to such charges as are therein stated to be upon information and belief; and as to those he believes the said charges so made to be true; and further affiant saith not.

M. O. CRUMPLER.

Sworn and subscribed to before me, the undersigned, this 13th day of February 1901.

L. B. MOSLEY, *Clerk.*
C. D. BANKS, *D. C.*

17 EXHIBIT "A."

CITY HALL, *November 12th*, 1886.

A special meeting of the board of mayor and aldermen to further consider the proposition of the Vicksburg Water Works Company, and to receive and entertain other propositions looking to the erection of a system of water works in our city was held on the above date.

Present: John W. Powell, mayor; aldermen—Kuhn, Ehrman, Rice, Anderson, Walsh, Baum & Crayton.

On motion of Alderman Baum, it was resolved that if any company or companies desiring to erect a system of water works in our city had a proposition to submit, said company or companies be requested to present their proposition.

After considerable discussion on the part of Major L. W. Magruder attorney for, and Mr. H. A. Hungerfors agent for Samuel R. Bullock & Company of New York, Mr. Smedes, A. B. Pittman and Capt. Butts representing the Vicksburg Water Works Company, and Aldermen Baum and other aldermen on the part of the board as to what would be the conditions the propositions of Samuel R. Bullock & Company would be received; the Vicksburg Water Works Company and some members of the board claiming the right of said Vicksburg Water Works Co. — submit another bid after the bid of Samuel R. Bullock & Company had been received and opened, Major Magruder and Mr. Hungerford denying the right of said Vicksburg Water Works Company to submit another bid after the bid of Samuel R. Bullock & Company had been received. On mo-

tion of Alderman Baum the resolution offered by him requesting any company or companies having bids to present for water work- be requested to present them was considered by the following vote,

Ayes—Aldermen Kuhn, Ehrman, Rice and Baum.

Nays—Crayton, Walsh, and Anderson.

On motion it was resolved that the board invite bids for the construction of water works at its meeting on Monday night with the following vote.

Ayes—Kuhn, Ehrman, Rice, Anderson, Walsh, & Baum.

Nayes. Crayton.

JOHN W. POWELL, *Mayor.*

18 Office of Birchett & Gilland.

NOVEMBER 18TH, 1886.

A special meeting of the board of mayor and aldermen to receive the report of the street committee on water works was held on the above date, present, Honorable John W. Powell, mayor, aldermen, Kuhn, Rice, Anderson, Walsh, Demarchi, Baum and Crayton, absent, Alderman Ehrman. The street committee through its chairman Alderman Baum, reported that after having considered the propositions of the Vicksburg Water Works Company and Samuel R. Bullock & Company of New York, they arrived at the conclusion that the latter proposition was the better of the two, and after conferring with Mr. Hungerford, agent of the said Samuel R. Bullock & Company, making certain changes and modifications in the original proposition as submitted by the said S. R. Bullock & Company on November 15th, 1886, submitted as their final report an ordinance, entitled "An ordinance to provide for a supply of water to the city of Vicksburg in Warren county, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates, successors and assigns for a supply of water for public use and giving the said city of Vicksburg an option to purchase the said works" which was read the first time under a suspension of the rules, was read the second time and third time by its title, and adopted with the following vote.

Ayes—Aldermen Kuhn, Rice, Anderson, Walsh, Demarchi, & Baum.

Nayes—Aldermen Crayton.

On motion it was resolved that the thanks of this board are due and hereby tendered to the street committee for the able manner — which they have settled the question of water works. * * * *

(Signed) JOHN W. POWELL, *Mayor.*

19 EXHIBIT "B."

An ordinance to provide for a supply of water to the city of Vicksburg, in Warren county, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock and Company, their associates, successors, and assigns for a supply of water for public use, and giving the said city of Vicksburg an option to purchase the said works.

Be it ordained by the mayor and aldermen of the city of Vicksburg.

SECTION 1. That in consideration of the public benefit to be derived therefrom the exclusive right and privilege is hereby granted for the period of thirty (30) years from the time that this ordi-ance takes effect unto Samuel R. Bullock & Company, their associates, successors and assigns, of erecting, maintaining and operating a system of water works in accordance with the terms and provisions of this ordinance, and of using the streets, alleys, public squares and all other public places within the corporate limits of the city of Vicksburg, Mississippi, as they now exist or may hereafter be extended and within such other territory as may now or hereafter be extended and within such other territory as may now or hereafter be under its jurisdiction for the purpose of laying pipes, mains, and other conduits and erecting hydrants and other ap-aratus for conducting and furnishing an adequate supply of good wholesome water to the city of Vicksburg, Mississippi and to its inhabitants for public and private *ise* and for making repairs and extenfions to the said system from time to time during the period in which this ordinance shall be in force.

The said Samuel R. Bullock & Company, their associates successors and assigns shall exercise the greatest care and diligence in the use of the said streets, alleys, public squares, and other public places and shall cause no unneces-ary obstruction of or interruption to the public travel ever or upon the same or any injury to or interference with any pipes, mains, sewers, which may now be lawfully located beneath the surface thereof.

The said Samuel R. Bullock & Company, their associates successors and assigns shall take every precaution to provide
20 against danger to property, life and limb by reason of the exercise of the rights and privileges hereby granted, and shall cause all excavations and obstructions to be properly lighted and guarded at night and after the completion of the purposes for which the said streets, alleys, public squares and other public places may be used they shall be restored to their former condition as near as may be without unnecessary delay, and they shall at their own cost and expense relay their mains and pipes when made necessary by a change of grade in any street ordered by the board of mayor and aldermen of said city if there was no established grade for such street at the time said mains and pipes were laid. On failure to restore said streets, alleys, public squares and other public places as

aforesaid, the mayor and aldermen of the city of Vicksburg may on reasonable notice to them by any city officer, cause the same to be restored and recover the costs and expenses thereof from the said Sam'l R. Bullock & Co., their associates, successors and assigns, in any court having jurisdiction of the amount.

The said Samuel R. Bullock & Company their associates, successors and assigns hereby agree to hold the mayor and aldermen of the city of Vicksburg, harmless from any liability which may result to it by reason of any violation of this section.

SECTION 2. The general plan of the said system of water works shall be as follows:

Mains.—The pipe system shall not consist of not less than twelve (12) miles of mains of sizes varying from sixteen inches (16) to six (6) inches in diameter. The pipe used shall be of the best quality of cast-iron pipe and each pipe shall be tested at its place of manufacture to a pressure of three hundred (300) pounds to the square inch. All pipe shall be coated with Dr. Angus Smith's preservative varnish, and shall be laid and jointed by competent mechanics, and in the best possible manner.

The streets along which and at what points said mains
21 shall be laid shall be first designated by the board of mayor and aldermen of the city of Vicksburg.

Hydrants.—The hydrants shall be double-nozzle fire-hydrants with nozzles fitted to, connect with the hose couplings now in use by the fire department of said city of Vicksburg.

The board of mayor and aldermen of the city of Vicksburg shall within thirty (30) days from the date of the final passage of this ordinance designate the points on the line of distributing mains at which the hydrants shall be erected.

Gates and valves.—All the necessary gates and valves shall be provided and located at such points on the lines of mains as will enable certain districts to be cut off and isolated when repairs are needed without depriving other districts of their full supply.

Pumps.—The pumping plant shall consist of two pumping engines each capable of pumping two millions (2,000,000) of gallons of water per day of twenty-four (24) hours against the pressure needed to supply all parts of the pipe system with an abundant supply of water. They shall be so arranged as to be operated separately or together.

Boilers.—The boilers shall be of ample capacity to operate the pumping engines and shall be so arranged as to be operated separately or together as may be required.

Stand-pipe.—There shall be a stand-pipe or a reservoir of sufficient capacity and height or elevation to furnish an ample supply of water for consumption at the highest points along the line of the mains.

Pump-house.—The pumps and boilers house shall be a substantial stone or brick building of ample size for the pumps and batteries
of boilers. The smokestack will be of brick of the size needed
22 to operate the boilers.

Source of supply.—The water shall be *at*ken from such point

as may be free from all sewerage, contamination and shall be good wholesome water fit for all purposes of domestic or manufacturing consumption.

SECTION 3. In consideration of the public benefit and the protection to property resulting from the construction of the said system of water works the mayor and aldermen of the city of Vicksburg, hereby rent to the said Samuel R. Bullock and Company their associates, successors, and assigns, not less than eighty (80) double-nozzle frost-proof fire-hydrants for the aforesaid period of thirty (30) years at the annual rate of sixty-five ($65) dollars for each hydrant to be payable semi-annually on the fifteenth days of January and July. After the first year of the operation of said water works the said city hereby rents not less than ten (10) hydrants in addition to said eighty (80) for the unexpired period of said thirty years; the first one hundred (100) hydrants shall be located on the original twelve (12) miles of mains at said annual rental of sixty-five ($65) dollars, payable as aforesaid and for the remainder of said period of thirty years unexpired at the time of placing each of said hydrants.

The rental of all hydrants in excess of said one hundred hydrants hereafter erected on the line of distributing mains or on the extentions thereof as hereinafter provided at the request of the said mayor and aldermen of the city of Vicksburg shall be at the annual rate of fifty (50) dollars for each hydrant payable as aforesaid during the unexpired period of the said original term of thirty (30) years. Water shall be used from the said hydrants for the extinguishment of fires and necessary fire practice and for flushing sewers and gutters, only provided that for fire practice and flushing sewers no more than two hydrants shall be opened at one time and not more than once in each week.

23 SECTION 4. Water shall be furnished free of charge to the public schools, and all other public buildings used exclusively for city purposes, and for filling public cisterns and the city hospital shall also be supplied with water free by a supply pipe whenever the mains shall be laid within seven hundred and fifty (750) feet of said hospital. And water shall also be supplied free for six (6) drinking fountains with openings for man and beast and one public fountain to be erected by the said Samuel R. Bullock & Co., in such place on the line of mains as the board of mayor and aldermen of the city of Vicksburg may direct.

SECTION 5. That said Samuel R. Bullock & Company, their associates successors or assigns may procure the organization of a water-works corporation under the laws of any State and may assign to it all the rights .and privileges acquired hereunder. Provided that such assignment shall not invalidate or effect the bond required by section (7) seven hereof and no assignment thereof shall be valid unless such assignee shall in writing to said board of mayor and aldermen accept this ordinance and become bound by its terms and obligations. And the said board of mayor and aldermen shall pass and enact such further and other ordinance and do and perform such other acts, including the repassage of this ordinance, in favor

of the said corporation as may be necessary to vest in the said corporation the rights and privileges hereby granted.

SECTION 6. Upon the completion of the construction of the said system of water works the said Samuel R. Bullock & Company their associates, successors and assigns, shall notify the mayor and aldermen of the city of Vicksburg to that effect in writing and thereupon submit the works to such a test as will show the capacity of the works to be sufficient to throw four (4) fire streams through one hundred feet of two and one-half inch hose and one-inch nozzle from four (4) different hydrants a stream not less than fifty (50) feet high at the highest location on which any of such hydrants
24 are located. On the satisfactory performance of this test the said board of mayor and aldermen shall formally accept said system if constructed in accordance with the terms of this ordinance.

SECTION 7. Within fifteen days after the day that this ordinance takes effect the said Samuel R. Bullock and Company, their associates, successors, or assigns shall file their written acceptance thereof, binding themselves to its terms and obligations, in the office of the city clerk accompanied by their bond in the penal sum of ten thousand ($10,000) dollars with two or more sufficient sureties to be approved by said board of mayor and aldermen executed to the mayor and aldermen of the city of Vicksburg and conditioned for the faithful compliance with the terms of this section. On failure to file such bond within said time this ordinance shall become null and void. But if said board shall not approve a bond so filed, said board may in its discretion grant additional reasonable time within which to file another bond.

The construction of the said system shall be commenced within sixty days after this ordinance takes affect, and said system shall be completed within eighteen (18) months after the commencement of the construction thereof provided however that the time during which the said Samuel R. Bullock and Company, their associates, successors, or assigns are delayed by floods, act of God or the public enemy, legal proceedings for the maintena-ce or defence of their legal rights or in the acquisition of property or right of way, or by reason of any other causes whatever beyond their control shall from no part of the time limited in this ordinance for the performance of any act required by the terms hereof to be done by them, but they shall use all due diligence to remove any such obstructions or delays.

SECTION 8. The said board of mayor and aldermen of the city of Vicksburg shall from time to time pass and enact ordinances under suitable penalties providing for the protection of the said works from damage, fraud or imposition.

25 SECTION 9. At the expiration of each period of ten years after this ordinance takes effect, the mayor & aldermen of the city of Vicksburg shall have the right and privilege to purchase the said system of water works provided they notify the said Samuel R. Bullock and Company, their associates, successors or assigns, of

their intention to do so, at least one year before the expiration of the said period of ten years.

The value of the said system shall be ascertained as follows: The said Samuel R. Bullock and Company, their successors, associates and assigns, and the board of mayor and aldermen of the city of Vicksburg shall severally appoint one person, the two appointees shall choose a third, and the three persons thus chosen, who shall be hydraulic engineers, shall constitute a board to determine the value of the said system of water works. None of the board shall be residents of the said Warren county. The said mayor and aldermen of the city of Vicksburg shall within sixty days after the said board have rendered its decision, pay the amount awarded in cash. A failure to so pay the award or to give notice of intention to purchase as above provided shall operate as a waiver of the right to purchase until the expiration of the next succeeding period of ten years.

SECTION 10. The said Samuel R. Bullock and Company their associates successors and assigns shall make extensions to their line of mains whenever called upon so to do by the mayor and aldermen of the city of Vicksburg. Provided however, that said extensions shall be not less than five hundred feet in length and that one public hydrant shall be located on each five hundred feet or major portion thereof, and further provided that two-thirds of the residents on the line of such extension shall agree to take water at the established rates for a period of at least two years, but the said Samuel R. Bullock & Company, their associates, successors and assigns may voluntarily make such extensions from time to time as they may deem necessary.

26 SECTION 11. After the works are put in operation, if at any time the pressure gauges located at the points hereinbefore named should indicate a pressure of less than twenty pounds (20) on the distributing mains at the highest point of elevation for the period of two weeks in succession then the rentals for the use and employment of the hydrants for the purposes aforesaid shall cease until the standard of pressure in this section provided shall be attained, provided however, if the pressure indicated as aforesaid, should be less than twenty pounds for two calendar months in succession then all the rights, and privileges of the said Samuel R. Bullock & Company their associates successors and assigns acquired by virtue of this ordinance shall at the option of said board of mayor and aldermen made in writing cease, determine and be null and void. But nothing herein contained shall be so construed as to prevent the said Samuel R. Bullock & Company their associates, or assigns from temporarily shutting off the water from its said system or any portion thereof, for the purpose of making repairs or extensions to the same; and no liability shall attach to the said Samuel R. Bullock and Company their associates, successors and assigns for the suspension of the supply of water provided the repairs or extensions are made and the water turned on again without unnecessary delay. But the city shall not be liable to pay the rental for any

hydrant during such time as the proper supply of water cannot be procured therefrom.

SECTION 12. Be it further ordained, That as part of the consideration for the performance of the duties and obligations hereby imposed on the said Bullock & Co., their associates, successors and assigns, the said water works and the property and business pertaining thereto and employed in and about said system shall be exempt from all municipal taxation during the first five years of their operation, and all of the property and business pertaining to and employed in and about said system of water works, shall thereafter during each year for the balance of the period of this contract
27 be assessed for taxation by said city at a valuation not to exceed the sum of fifty thousand dollars ($50,000).

SECTION 13. The said Sam'l R. Bullock & Co., their associates successors or assigns shall have the right to make all needful rules and regulations governing the consumption of water, the tapping of pipes and general operation of the works and to make such rates and charges for the use of said water as they may determine, provided that said rates and charges shall not exceed fifty cents for each one thousand gallons of water.

SECTION 14. Be it further ordained, That for the purpose of paying the obligations and liabilities of the said mayor and aldermen of the city of Vicksburg, which shall accrue to the said Sam'l R. Bullock & Company, their associates, successors or assigns by virtue of the terms and conditions of this ordinance, the said mayor and aldermen of the city of Vicksburg or other duly constituted municipal authorities shall annually levy and cause to be collected upon the taxable property of said city a special tax, to be known and designated as the water-works tax, sufficient to meet and pay all of said obligations and liabilities during the continuance of this contract and until all of said obligations and liabilities shall be paid and discharged.

SECTION 15. Be it further ordained, That this ordinance shall take effect from and after its approval by the mayor Ordained this 18th day of November, 1886.

(Signed) H. J. TROWBRIDGE, *City Clerk.*

Approved this 19th day of November, 1886.

(Signed) JOHN W. POWELL, *Mayor.*

28 EXHIBIT "D."

Know all men by these presents, that, whereas the mayor and aldermen of the city of Vicksburg, State of Mississippi did on the eighteenth day of November, 1886, pass and enact a certain ordinance entitled "An ordinance to provide for a supply of water to the city of Vicksburg in Warren county, Mississippi and to its inhabitants, contracting with Sam'l R. Bullock and Company, their associates, successors and assigns, for a supply of water for public use, and giving the said city of Vicksburg an option to purchase the said works," which ordinance was thereafter on the 19th day of November, 1886, duly approved as required by law.

And whereas under and by virtue of section 5 of the aforesaid ordinance the grantees thereof were empowered to procure the organization of a water-works corporation with the right to assign to it all the rights and privileges acquired thereunder.

And whereas in pursuance of section 5 of the aforesaid ordinance the said grantees have procured the incorporation of the Vicksburg Water Supply Company under the laws of the State of Mississippi.

And whereas, the terms and conditions of section 7 of the said ordinance as to acceptance of the said ordinance and filing of the penal bond as therein provided, have been duly complied with,

Now therefore know ye for and in consideration of the sum of one dollar lawful money of the United States of America and other valuable considerations to us in hand paid by the Vicksburg Water Supply Company, a corporation existing under and by virtue of the laws of Mississippi, the receipt whereof is hereby duly acknowledged, we, the said Samuel R. Bullock and William S. Mercer, composing the firm of Samuel R. Bullock & Company, for ourselves, our personal representatives and assigns, have assigned transferred and set over, and do by these presents, assign, transfer and set over, unto the said The Vicksburg Water Supply Company and its successors and assigns, all our right, title and interest in and to the ordinance aforesaid, and all ordinances resolutions and orders adopted
29 subsequent to the aforesaid ordinance, and in any manner relating thereto, as fully and to all intents and purposes as if the said, The Vicksburg Water Supply Company had been originally named as grantee therein.

In witness whereof, we have hereunto set our hands and seals this first day of March, 1887.

SAM'L R. BULLOCK.
WM. S. MERCER.

Sealed and delivered in the presence of—
JAS. A. RYERSON.

STATE OF NEW YORK, }
City and County of New York, } ss:

Be it remembered that on this 16th day of March in the year one thousand eight hundred and eighty-seven, before me, the undersigned, Edwin F. Corey, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority, and under the laws of the State of Mississippi to take acknowledgement of deeds &c., to be used or recorded therein, personally appeared the within-named, Samuel R. Bullock and William S. Mercer, who acknowledges that they signed sealed and delivered the foregoing instrument on the day and year therein mentioned as their act and deed.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

(Signed) EDWIN F. COREY,
[SEAL.] *Commissioner for State of Mississippi.*

Office, 60 Wall street, N. Y.

30 EXHIBIT "E."

Know all men by these presents: That whereas, the mayor and aldermen of the city of Vicksburg did on the eighteenth day of November 1886, pass a certain ordinance entitled, "An ordinance to provide for a supply of water to the city of Vicksburg in Warren county, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates, successors and assigns for a supply of water *ofr* the public use, and giving the said city of Vicksburg an option to purchase the said works."

And whereas under and by virtue of section 5 of the said ordinance the grantees thereof were authorized to procure the organization of a water-works corporation and to assign to it all the privileges acquired thereunder.

And whereas in pursuance of said authority the Vicksburg Water Supply Company has been incorporated under the laws of the State of Mississippi and under and by virtue of a certain assignment bearing date March 1st 1887, the said company has succeeded to all rights and privileges acquired under the aforesaid ordinance by the said Samuel R. Bullock and Company.

And whereas it is provided by section 5 of the said ordinance that no assignment shall be valid unless the assignee shall accept the said ordinance in writing.

Now therefore be it known that the Vicksburg Water Supply Company for itself, its successors and assigns have accepted and do by these presents accept and agree to become bound by the terms and obligations of the aforesaid ordinance.

[SEAL.] In witness whereof the said company has caused this acceptance to be signed in its corporate name by its president and its corporate seal attached by its secretary to be hereto affixed this first day of March 1887.

Exhibit "E."

31 (Signed) THE VICKSBURG WATER SUPPLY COMPANY,
By E. WOLTMAN, *President.*

Attest: CHARLES M. BERRIAM, *Secretary.*

I hereby certify that the above and foregoing is a true and correct copy of the original acceptance of the Vicksburg Water Supply Company as the same appears of record now on file in my office.

Given under my hand and the corporate seal of the city of Vicksburg this 24th day of November, 1888.

(Signed) H. J. TROWBRIDGE,
[SEAL.] *City Clerk of the City of Vicksburg.*

32 EXHIBIT "F."

At an adjourned regular meeting of the board of mayor and aldermen of the city of Vicksburg, held on the 18th day of May 1887, the following action was had, to wit:

"The written acceptance of the Vicksburg Water Supply Company accepting and binding themselves to the terms and obligations of the contract as accepted by Samuel R. Bullock and Company, was read and ordered recorded."

I hereby certify the above to be true and correct.

Given under my hand and the corporate seal of the city of Vicksburg this 24th day of November, 1888.

(Signed) H. J. TROWBRIDGE,

[SEAL.] *City Clerk of the City of Vicksburg.*

33 EXHIBIT "G."

Whereas on the 8th day of August, 1900 at the Real Estate exchange # 111 Broadway, New York city, State of New York, under and by virtue of a deed of trust executed by the Vicksburg Water Supply Company of Vicksburg Mississippi, to the Farmers' Loan and Trust Company, trustee, recorded in Book — on page — of the records of deed- of Warren county, Mississippi, securing the payment of two hundred and fifty thousand dollars of bonds and interest thereon, there was sold under said deed of trust all of the property, real and personal belonging to the Vicksburg Water Supply Company located in Vicksburg, in Warren county, Mississippi, as well as elsewhere, and more particularly described as follows to wit: All of its real and personal property goods & chattels now owned or which may hereafter be acquired by it, including its land, water works, buildings, pump-houses, stand-pipes, reservoirs, machinery, pipes, mains, hydrants, apparatus, and equipments, situated in the city of Vicksburg, county of Warren, State of Mississippi, together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, tolls, rent, issues, income and profits accruing therefrom, also all and singular the corporate franchises, privileges, rights, liabilities which the water company now has and can exercise or shall hereafter acquire and possess. And, also, all the estate, right, title, interest, property, possession claim and demand whatsoever, as well in law as in equity of the water company of, in and to, the property above described or hereafter acquired, and each and every part or parcel thereof, with appurtenances, together with one certain written contract existing between the Vicksburg Water Supply Company and the Board of Mayor and Aldermen of Vicksburg, Mississippi, dated on the 18th day of November, 1886, and approved on the 19th day of November 1886, for the rental of hydrants, for the use of the public for thirty years, which was assigned to the Vicksburg Water Supply Company by S. R. Bullock & Company on the first day of March 1887, and notice being duly given by the Vicksburg Water Supply Company

Exhibit "G."

34 to said board of mayor & aldermen on the first day of March, 1887, of Bullock & Company's assignment of said contract to the Vicksburg Water Supply Company and of the Vicksburg Water

Supply Company's acceptance of contract: whereupon the board of mayor & aldermen of the city of Vicksburg, Mississippi, accepted and approved said assignment on the 18th day of May 1887.

Now therefore, at said sale as aforesaid, said Vicksburg Water Works Co. of Vicksburg, Mississippi, purchased said property, contract &c., as above described and set out.

Now therefore for the consideration of one dollar, cash in hand paid to the Vicksburg Water Supply Company, and for the further consideration of the benefit that the Vicksburg Water Supply Company have already derived through said contract and for the further purpose of showing good faith on our part to the purchaser thereof, the Vicksburg Water Supply Company, through its president, hereby conveys and quitclaim- all of the right, title, interest of every kind and nature whatsoever, it may have in and to the aforesaid property as above described, real and personal, or that it may now own, or may have owned or may hereafter acquire, including said contract with the board of mayor and aldermen aforesaid, situated in the city of Vicksburg, county of Warren, State of Mississippi, unto the Vicksburg Water Works Company of Vicksburg, Mississippi.

In witness whereof, the Vicksburg Water Supply Company has caused these presents to be signes in its respective corporate name by it- respective president, and its corporate seal attested by its respective secretary, to be hereto affixed on the 18th day of October 1900.

Revenue stamps having been affixed to deed from Farmers' Loan & Trust Company to Vicksburg Water Works Company, we deem it unnecessary to affix the same hereto.

(Signed) WHITNEY CONANT,
[SEAL.] *President of the Vicksburg Water Supply Company.*

W. G. SNOW, *Secretary.*

35 STATE OF NEW YORK, } ss:
New York City & County, }

Personally appeared before me Charles Edgar Mills a duly authorized commissioner of deed- for the State of Mississippi in New York, residing in New York city and State the within-named Whitney Conant, president of the Vicksburg Water Supply Company and W. G. Snow secretary who each acknowledged that they signed, sealed and delivered the foregoing deed on the day and year therein mentioned to be the free and voluntary act and deed of the Vicksburg Water Supply Company, for the use and purposes therein mentioned they being hereto duly authorized. That the corporate seal attached is the corporate seal of said company, and was duly affixed thereto by due authority.

Given under my hand and official seal this October 18, 1900.

(Signed) CHARLES EDGAR MILLS,
[SEAL.] *Commissioner for the State of Mississippi in New York and Notary Public for New York County and City.*

STATE OF MISSISSIPPI, } ss:
Warren County, }

I, J. D. Laughlin, clerk of the chancery court of said county, hereby certify that the foregoing instrument of writing was filed in my office for record on the 10th day of December 1900 at 9–10 o'clock a. m. and duly recorded in Deed Book No. 93 page 463 *et seq.*

Witness my hand and seal of said court, this 10th day of December, 1900.

(Signed) J. D. LAUGHLIN, *Clerk,*
[SEAL.] By J. L. HYLAND, *D. C.*

36 EXHIBIT "H."

To the honorable board of mayor & aldermen of *the* Vicksburg, Mississippi.

GENTLEMEN: On the 8th day of September 1900, I, as secretary of the Vicksburg Water Works Company notified you that it was the assignee owner of a certain written contract entered into between Samuel R. Bullock & Company of the one part, and the Board of Mayor and Aldermen of the City of Vicksburg of another part, approved and accepted on the 19th day of November 1886 by both parties, whereby Bullock & Company, their associates, successors and assigns for certain considerations therein mentioned is to supply the city with water for public and private use, but I withdrew the notification until the board of directors of the Vicksburg Water Works Company could officially meet and accept said contract and authorize me to give you notice, and the same having been done by the Vicksburg Water Works Company by resolutions by said board of directors, now therefore, this instrument in pursuance of their action and request in this behalf, is to inform you that the Vicksburg W*ta*er Works Company, of Vicksburg, Mississippi is the owner of said contract and has been, since about the 15th day of August 1900, and in accordance with its minutes by resolutions adopted by its board of directors it thereby accepted said contract and said ordinance and became bound by its terms, conditions and obligations in every respect as the assignee and owner of said contract, and I as its secretary was instructed to give you notice of its acceptance as above set out.

Witness its hand and seal of its secretary this 19th day of November, A. D. 1900 at Vicksburg, Mississippi.

(Signed) M. O. CRUMPLER.

I received a copy of said notice the 20th day of November.

(Signed) H. J. TROWBRIDGE,
City Clerk.

Exhibit "H."

37 At a regular meeting of the mayor and aldermen of the city of Vicksburg, Mississippi, held on the 7th day of Novem-

ber, 1900, amongst other proceedings had at said meeting, was the following to wit:

Resolved, That the mayor be and is hereby instructed to notify the Vicksburg Water Works Company that the mayor and aldermen deny any liability upon any contract for the use of the water-works hydrants. That from and after August 1900, they will pay reasonable compensation for the use of said hydrants. That the city attorney take such action as shall be necessary to determine the rights of the city in the premises.

I hereby certify that the above and foregoing is a true and correct copy as taken from the original records as the same appears on file in my office.

Given under my hand and the seal of said city, this 13th day of November 1900.

(Signed) H. J. TROWBRIDGE,
[SEAL.] *City Clerk.*

Copy.
Exhibit "I."

38 EXHIBIT "J."

Resolved: That the water-works committee be instructed to notify the present owners of the Vicksburg Water Works Company, that the city of Vicksburg is authorized by law to purchase or build a water-works system, not to exceed in value $150,000 including all the expenses for engineering, supervision, etc., and that said committee request the owners of said water works company to say whether or not they are willing to sell their plant machinery and system complete to the city, and if yea, to name a price at which they will be willing to sell, and name a time within which the city shall have the option to purchase the same, giving the city authorities full time to investigate by competent engineers, the condition of the system as to repair, and affording them ample opportunity to ascertain its present value, the answer to be presented in writing at *any* early day as possible for the action of this body.

Exhibit "J."

39 EXHIBIT "K."

To the honorable board of mayor & aldermen of the city of Vicksburg:

When your petitioners purchased the water works of this city, it knew that its dependent source of revenue and support must come from its contracts with the city and citizens to supply the same with water as a protection against, fire, private use, etc., and that it has been supplying said city and citizens with water for these purposes and faithfully in accordance with said contracts and with the understanding that the city would pay it the price as agreed, but, notwithstanding this constant and faithful delivery, the city through you, is now refusing to carry out and pay the contract price to petitioner as

agreed upon for water received and used by you, but offers a wholly *and* inadequate price for said water so received and used.

Your petitioner shows aside from the legal obligations under the contract, the unjust proposition in offering to pay what you call a reasonable price for services rendered, in this, the city through its citizens are now only obligated to pay your petitioner under contract price $7,600.00 annually, while the city or its citizens are saving about $35,000.00 annually on insurance alone, caused or brought about solely by the water used by you, thereby leaving a net gain after paying $7,600.00 of over $25,000.00 annually to the city or her citizens, which are one and the same, aside from the further benefits received by you free of charge, such as public fountains, schools, hospitals, etc.

Your petitioner further shows that we are anxious and willing to keep up this constant supply of water and maintain the pressure thereof, but should you reduce the present price, or refuse to pay at all, it will simply be impossible for your petitioner to keep up its enormous expenses and maintain itself, and supply water because you know and realize that it is impossible for any concern to continuously run its business at a loss. With the present price which you are now obligated under said contract to pay for said water, it is almost impossible for your petitioner to operate and live.

40 The water company has and did offer to the water committee and the attorn*ies* for the city that the water company would give the city, assurance in writing that the payment for water received and used by the city at the contract price, should not in any way prejudice the city's suit against the water company.

Exhibit "K."

41 Upon complainant entering into bond in the sum of eight thousand dollars ($8,000) the clerk will issue a restraining order as prayed for in the foregoing bill of complaint.

February 14th 1901.

H. C. NILES, *Judge.*

42 Number 41. Vicksburg Water Works Company *vs.* Mayor and Aldermen of Vicksburg. Filed February 16th, 1901. L. B. Mosley, clerk. C. D. Banks, D. C.

43 "EXHIBIT X."

STATE OF MISSISSIPPI, }
County of Warren. }

In the Chancery Court.

To the Honorable W. C. Martin, chancellor:

The Mayor and Aldermen of the City of Vicksburg, a municipal corporation under the laws of the said State complainants exhibit this their bill of complaint against The Vicksburg Water Supply and The Vicksburg Water Works Company, corporations under the laws

of the State of Mississippi and domiciled in the said city of Vicksburg, defendants and respectfuly show:

That on the 16th day of November 1886, the said complainants in their official capacity adopted an ordinance whereby a contract was entered into with certain persons doing business under the firm name and style and designated as Samuel R. Bullock and Company, their associated successors and assigns for a supply of water for public use.

That a copy of said ordinance is hereto annexed as Exhibit "A" and made a part of this bill.

It is provided in section 1, that in consideration of the public benefit to be derived therefrom the exclusive right and privilege is hereby granted for the period of thrity (30) years from the time that this ordinance takes effect unto Samuel R. Bullock & Company, their associates, successors and assigns, of erecting, maintaining, and operating a system of water works in accordance with the terms and provisions of this ordinance, and of using the streets, alleys, public squares and all other public places within the corporate limits of the city of Vicksburg, Mississippi, as they now exist or may hereafter be extended and within such other territory as may now or hereafter be under its jurisdiction for the purpose of laying pipes, mains, and other conduits, and erecting hydrants and other apparatus for conducting and furnishing an adequate supply of
44 good wholesome water to the city of Vicksburg, Mississippi, and its inhabitants for public and private use and for making repairs and extensions to the said system from time to time during the period in which this ordinance shall be in force; and further said section makes provision that the said Samuel R. Bullock & Company should exercise proper care and diligence in and about the construction of said works.

That by section two the general plan of said system of water works is defined including specifications as to mains, hydrants, gates and valves, pumps, boilers, standpipes, pump-houses, and also as to the source of supply of water.

It is specially provided under the head of pumps; that the pumping plant shall consist of two pumping engines each capable of pumping two millions (2,000,000) of gallons of water per day of twenty-four (24) hours, against the pressure needed to supply all parts of the pipe system with an abundant supply of water.

They shall be so arranged as to be operated separately or together.

By said section the source of supply and character of water was specially designated in words as follows: The water shall be taken from such point as may be free from all sewerage contamination, and shall be good wholesome water, for all purposes of domestic or manufacturing consumption.

By section three, provision was made for compensation to the said Samuel R. Bullock as follows: In consideration of the public benefit and the protection to property resulting from the construction of said system of water works, the mayor and aldermen of the city of Vicksburg, hereby rents of the said Samuel R. Bullock &

Company, their associates, successors, and assigns, not less than eighty (80) double-nozzle, frost-proof, fire-hydrants for the aforesaid period of thirty (30) years, at the annual rate of sixty-five dollars ($65) for each hydrant to be payable semi-annually on the fifteenth days of January and July. After the first year of the operation of said water works, the said city hereby rents not less than ten
45 (10) hydrants in addition to said eighty (80) for the unexpired period of said thirty years; the first 100 hydrants shall be located on the original twelve (12) miles of main, at said annual rental of sixty-five dollars, payable as aforesaid, and for the remainder of said period of thirty years unexpired at the time of placing each of said hydrants.

The rental of all hydrants in excess of one hundred (100) hydrants hereafter erected on the line of distributing mains or on the extentions thereof as hereinafter provided at the request of the said mayor and aldermen of the city of Vicksburg shall be at the annual rate of fifty dollars ($50) for each hydrant, payable as aforesaid during the unexpired period of the said original term of thirty (30) years.

By section ten, it is provided that the said Samuel R. Bullock & Company should supply and provide with water free of charge six drinking fountains with opening for man and beast at such places as the board of mayor and aldermen of said city might designate.

By section five, it is provided as follows: The said Samuel R. Bullock and Company, their associates, successors or assigns, may procure the organization of a water works corporation under the laws of any State, and may assign to it all the rights and privileges acquired hereunder. Provided, that such assignment shall not invalid*idate* or affect the bond required by section *section* seven (7) hereof, and no assignment hereof shall be valid, unless such assignee shall, in writing to said board of mayor and aldermen accept this ordinance and become bound by its terms and obligations. And the said board of mayor and aldermen shall pass and enact such further and other ordinances and do and perform such other acts, including the repassage of this ordinance in favor of the said corporation as may be necessary to vest in the said corporation the rights and privileges hereby granted.

By section eleven, it is provided that a pressure of not less then twenty pounds on distributing mains shall be maintained at the highest point of elevation; and it is further provided if the pressure should be less then twenty pounds for two calender months in succession then all of the rights and privileges of the said Samuel
46 R. Bullock —, their associates successors, and assigns asquired by virtue of this ordinance shall at the option of the board of mayor and aldermen made in writing cease and determine.

It is provided in section twelve, for a part of the consideration of the contract that the property and business of said water works shall be exempt from municipal taxation for the first five years of their operation and thereafter during the period of said contract, all of said property and the business shall be assessed for taxation by said city at a valuation not to exceed fifty thousand dollars:

That by section fourteen, of said act, it is provided that for the

purpose of paying the obligations of the said mayor and aldermen accruing to the said Samuel R. Bullock and Company, their associates, successors and assigns under said contract the said mayor and aldermen shall annually levy and cause to be collected upon all the taxable property of said city a special tax to be known as the water-works tax, sufficient to pay said obligations during the continuance of the contract and until all of said obligations shall be paid and discharged.

Complainants further show that in pursuance of said contract the said Samuel R. Bullock & Company proceeded to construct and erect a system of water works in said city and that afterwards to wit;—on the — day of —— the said works were accepted by said mayor and aldermen.

That thereafter the said Samuel R. Bullock & Company procured the organization of The Vicksburg Water Supply Company one of said defendants, as a corporation under the laws of the State of Mississippi and by virtue of said section five, assigned to said corporation said contract and afterwards on the — day of —— the said Vicksburg Water Supply Company in writing accepted said ordinance and thereupon the said board of mayor and aldermen formally approved said assignment.

That the said Vicksburg Water Supply Company operated and owned said works from said date, to the 15th day of August, 1900,
and was annually paid the compensation fixed by said con-
47 tract for the use of its hydrants aggregating the sum of about eight thousand dollars ($8,000) per annum.

That on the 1st day of March, 1897, the said Vicksburg Water Supply Company for the purpose of securing two hundred and fifty thousand dollars ($250,000) of bonds executed a deed of trust upon all its property situated in the county of Warren and State of Mississippi, and described in said deed of trust as follows: All of its real and personal property, goods & chattels now owned, or which may hereafter be acquired by it including its lands, water works, buildings, pump-houses, stand-pipes, reservoirs, machinery, pipes, mains, hydrants, apparatus and equipment situated in the county of Warren, State of Mississippi, together with all and singular the tenements, hereditaments, thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, tolls, rents, issues, income, and profits, accruing therefrom also all and singular the corporate franchises, privileges, rights and liberties, which the water company now hath and can exercise or shall hereafter exercise or shall hereafter acquire and possess, and also all the estate, right, title, interest, property, possession, claim, and demand, whatsoever, as well in law as in equity of the water company of, in and to, the property above described and each and every part and parcel thereof with the appurtenances.

That some time in March, 1900, the said First national bank sold all of said mortgage bonds to certain persons to wit: M. O. Crumpler, and others in consideration of twenty-five thousand dollars ($25,000) cash and the further sum of one hundred and twenty-five

thousand dollars ($125,000) in certain mortgage bonds to be thereafter issued upon the said property.

That it was also agreed between said parties that the deed of trust above mentioned should be foreclosed in accordance with its terms default having been made by said company as to its obligations under said deed of trust.

48 That a sale of said property was afterwards made on the 15th day of August, 1900, in the city of New York by the trustee under said deed of trust, at which the property above described was sold to the said M. O. Crumpler, and others which said property was afterwards by said Crumpler and others, conveyed to the defendant the said Vicksburg Water Works Company.

Complainants further show that the contract entered into with Samuel R. Bullock & Company, on the 18th day of November, 1886, is null and void, and the attempt by said mayor and aldermen to make such contract was a gross abuse of their rights and powers:

That the said mayor and aldermen had no right to make a contract for so long a time as thirty years and beyond the life of their official terms to bind the constituted authorities of said city to pay rents for the said hydrants as therein stipulated.

Then whatever may have been at the time a reasonable and just compensation to be paid to said water company for said hydrants, such payment is now an excessive and unjust charge and an extortional burden upon the tax-payers of said city.

Complainants show that the cost to construct a system of works like that at present operated in Vicksburg, and claimed to be owned by said defendant water works company, can be built, in every respect as good, for a sum not exceeding one hundred and thirty thousand dollars ($130,000). The present income of said water works including their claim against the city for annual rentals of said hydrants, amount in the aggregate to thirty thousand dollars ($30,000) per annum and that the expenses of every kind including improvements and betterments would not exceed an annual outlay of fifteen thousand dollars ($15,000), which would be a net return of ten per cent. upon an investment of one hundred and fifty thousand dollars ($150,000), and that the rates prescribed in said contract for the use of said hydrants and the rates charged by said company against domestic consumers are exorbitant and illegal and said board

49 exceed its power and authority in making a contract stipulating during the period aforesaid for said rates.

Complainants further show that by the 25th section of the charter of the city of Vicksburg, which was in force at the time of making said contract, it is provided that the said mayor and aldermen shall not make any contract involving an expenditure of corporation funds, relating to work on public streets, or the erection, extention, or repair of public buildings, where the cost of the proposed work shall exceed five hundred ($500) dollars, or for materials to be furnished exceeding two hundred dollars in value, except upon advertisement duly made for sealed proposals to do such work.

Nevertheless said mayor and aldermen entered into said con-

tract whereby said terms were imposed upon the city for said period without any advertisement for sealed proposals as provided by law, by reason whereof, said contract was unauthorized and is illegal and void.

Complainants further show that the said mayor and aldermen had nor right or power to make provision as was attempted to be done by the 14th section of said contract to make an an-ual levy of a special tax tp be known as the water-works tax, to pay the obligation of said city, accruing under said contract.

Complainants further show that by the terms of the first section of said act the said mayor and aldermen attempted to grant and did grant unto the said Samuel R. Bullock & Company the exclusive right, and privilege for the period of thirty years of erecting, maintaining and operating a system of water works within the corporate limits of the city of Vicksburg, and for the exclusive use of the streets, alleys, and public squares of said city for that purpose, for the purpose of supplying water to the city of Vicksburg, and its inhabitants for public and private use.

That the said mayor and aldermen had no right or power to make such contract; that an exclusive grant or monopoly if the kind is in contravention of the public policy of the State and is illegal and void.

That it is provided by section two, of said contract that the pumping plant should consist of two pumping engines each capable of pumping two millions (2,000,000) of gallons of water per day of twenty-four hours.

Complainants aver and charge the fact to be, that neither the Vicksburg Water Supply Company, nor the Vicksburg Water Works Company have ever complied with the provisions of this section.

That in constructing said works originally the pumps were connected with the Mississippi river for a water supply, but that the contrivance for that connection failed and the pumping of the water since 1889 from the supply has been made by pumps of inferior and unequal capacity to do the work required by said contract.

That said inferior pumps are used to take the water from the Mississippi river and to fill up a basin from which it is again pumped into the mains, by reason whereof said mayor and aldermen are entitled to have said contract annulled.

Complainants further show that the Vicksburg Water Supply Company and the Vicksburg Water Works Company have failed to provide for public and private use, good and wholesome water.

That particularly since the 15th day of August 1900, said Vicksburg Water Works Company have continuously from day to day and are now furnishing water which is not goor or wholesome; that the water which has been provided from day to day by said company is wholly unfit for use and deleterious to health, and that it is not even fit for ordinary bathing purposes.

That notwithstanding public and other complaints to the contrary said company has persistently, negligently, wilfully and unlawfully disregarded its obligations to said city in this regard, by

reason whereof the said mayor and aldermen now claim the right to have said contract annulled.

That the purposes for which said works were constructed and organized *was* to provide not only the said city with fire protection, but also its citizens with a supply of good and wholesome water for domestic use.

51 That such object and purpose has wholly failed by reason of the negligence and disregard of its duties by said water works company in that regard.

Complainants further show and charge that the action of the said mayor and aldermen which undertook according to the provisions of section 12 of said contract to exempt the property and business of said water works from municipal taxation for five years, and afterwards provide that the assessment of said property should not exceed the sum of fifty thousand dollars ($50,000) was an abuse of the powers of said mayor & aldermen, whereby an unjust burden was imposed upon the tax-payers of said city.

That said board had no right to make any exemption from taxation of said property, and had no right to provide by contract for said assessment at fifty thousand dollars ($50,000), and the action of said board in this regard is illegal and void and said contract is in consequence a nullity.

Complainants further charge that the Vicksburg Water Works Company have negligently failed and refused to comply with the obligations imposed upon it by section eleven of said contract, wherein there is required that a pressure of not less than twenty pounds shall be maintained upon the distributing mains at the point of their highest elevation.

That by said section it is further provided that if the pressure should be less than twenty pounds for two calender months in succession, then all the rights conferred by said contract shall at the option of said mayor and aldermen made in writing cease and determine.

Complainants charge that the said Vicksburg Water Works Company have negligently failed for more than two calender months to maintain said pressure at said elevation, and the mayor and aldermen do now exercise their option and now declare that the rights and privileges conferred by said contract shall cease and determine.

Complainants further show that the said mayor and aldermen at a meeting held on the 5th day of November it was resolved and declared that the said board no longer recognized any liability

52 under said contract, to said company, by reason whereof complainants say that said contract no longer exists.

Complainants further show that by the terms of section seven a bond was required to be executed by the said performance of the conditions of said contract, and by section five the right was given to the said Samuel R. Bullock & Company, to procure the organization of a water works company authorizing assignment to it of all rights acquired under said contract: It was further provided that

no assignment of the contract should be valid unless in writing, the assignee would accept the ordinance.

That by the terms of these two sections it was contemplated that there should be no assignment of said contract except to a company organized by Samuel R. Bullock and Company and made in pursuance of said provisions.

Complainants now show that the said Vicksburg Water Works Company have never acquired by assignment or otherwise, said contract or any rights thereunder.

Complainants show that the matters hereinbefore set forth in respect of the sale to M. O. Crumpler and others of the mortgage bonds issued by the Vicksburg Water Supply Company and a foreclosure under the deed of trust securing the same are made upon information and belief.

The mayor of this city on or about the — day of October 1900 addressed a formal communication to the Vicksburg Water Works Company requesting that it should inform the constituted authorities of said city of the muniments of its title and the right by which it claims to be the assignee of said contract: A copy of said letter is hereto annexed marked Exhibit "B" and made a part of this bill.

The said water works company have refused and still refuse to give to the said mayor and aldermen of said city any information in the premises.

That they have not been informed and do not know anything concerning the alleged rights of the said Vicksburg Water
53 Works Company in the premises further than its own declaration that it claims to own the water-works plant situated in this city and claims the right to assert the rights and privileges granted to Samuel R. Bullock and Company under said contract.

Complainants now deny that the said Vicksburg Water Works Company or the said M. O. Crumpler, or any one else have ever acquired any right whatever accruing under said contract.

Complainants further show that the Vicksburg Water Supply Company is a defunct organization and is entirely without assets or business and has ceased to be a going concern; they are informed that all of its property and other assets were on the 15th day of August 1900 sold under said deed of trust.

That since the said 15th day of August 1900 it has not complied with any of the terms of said contract:

That it had no means or agencies whereby to carry out the obligations assumed by it under said contract.

That by the terms and spirit of said contract its obligations was a continuous one from day to day to provide said city and it- inhabitants with water in a sufficient supply for their needs.

That as between said Vicksburg Water Supply Company and the city of Vicksburg said contract has become and is void and a nullity:

That when it permitted itself to become permanently disabled from performing the obligations of said contract and when it became utterly insolvent and bankrupt without any means or assets or with-

out any organization as a corporation, said contract thereupon and thereby became dissolved and became a nullity.

That one Chester R. McFarland, who was formerly superintendant of the Vicksburg Water Supply Company has been nominally continued in said office to the 1st day of January, 1901.

Wherefore complainants say that they are entitled as against the Vicksburg Water Supply Company to have said contract declared as having been dissolved and as being without force or effect.

54 Complainants further show that said mayor and aldermen were authorized and empowered by virtue of an act of the legislature approved on the — day of February 1900 to construct or cause to be constructed a system of sewerage in the city of Vicksburg at a cost not to exceed the sum of one hundred and fifty thousand dollars ($150,000).

That the health and welfare of the inhabitants of said city demand that a system of sewerage should be constructed; that the growth and extebt of its population are such as imperatively require this publi- utility. Said law however requires as a condition precedent to the construction of said sewerage that said mayor and aldermen should first acquire and own a system of water works either by purchase or construction; it was manifestly contemplated by said law and by the constituted authorities of said city that said water works then owned by the said water works company might be acquired upon reasonable terms of compensation, nevertheless, under the alleged contract the said water works company claims the right to demand from the city the sum of eight thousand dollars a year during the unexpired term of said contract to wit: until the 19th day of November 1916:

That since the passage of said act, the said Vicksburg Water Works Company have acquired possession of said plant and are now asserting that they are the owners of the same, and also claim that they have succeeded to the rights of the ocntract made with Samuel R. Bullock and Company as aforesaid.

That under the circumstances no reasonable terms can be made between the said Vicksburg Water Works Company and said city for the purchase of said works:

That if said works were new they would not cost above the sum of one hundred and thirty thousand dollars ($130,000):

That the present plant is now about fourteen years old and has depreciated in value and efficiency accordingly:

That the present method by which water is taken from the Mississipi river and the present character of the water are such that they could not be tolerated, by the said mayor and aldermen, in case it should acquire a system of its own.

55 That any system which would be acquired by said city and operated for the benefit of its people would be a gross imposition upon its inhabitants and a gross dereliction of the official duties of said board if it did not provide for a supply of good and wholesome water:

That it would cost the sum of not less than fifty thousand dollars

to change and improve the present water-works plant in such a way as to make said plant efficient and satisfactory:

That the said Vicksburg Water Works Company will not yield its contention that it possesses a subsisting contract with said city whereby it is entitled to claim an an-ual payment of eight thousand dollars for the next sixteen years.

That in fact this pretended claim constitutes the most valuable of the alleged assets of said company: that without it said plant and all of its property and business would not be worth the sum of one hundred thousand dollars ($100,000):

Complainants further show that the imperative duty imposed upon said mayor and aldermen by said law to make provision for said sewerage plant and to that end to acquire a system of water works, is embarrassed and obstructed by the pretended claim of said Vicksburg Water Works Company as aforesaid.

That the said mayor and aldermen would not be warranted in exercising its rights to build a new system if it be true that they are bound to said water works company by contract requiring a payment for the rental of the present works at eight thousand dollars per year for the next sixteen years:

That it would be a dereliction of public duty on the part of said mayor and aldermen and a gross disregard of their obligations to admit the contention of the said water works company, that they are bound to it by the terms of said contract as a basis for the purchase of said plant.

That the said defendant the said Vicksburg Water Works Company have unjustly and illegally embarrassed and obstructed said mayor and aldermen in and about their duties as aforesaid, and continue to persist and so obstruct them, by said pretended and alleged claim.

56 Complainants aver that it is the duty of said mayor and aldermen to cause to be promptly determined the question of their liability under said contract to the said Vicksburg Water Works Company.

That they owe it to the citizens and tax-payers of said city to secure for them such public utilities as a water-works plant and a sewerage system upon the most economical and best terms.

That they should be free to act for the best interest of said city in the premises and rid of their alleged liability to said company.

That they are entitled to have ascertained and determined whether or not the said city is legally bound by said contract; that of it shall be determined that the- are so bound, they should be free to exercise their discretion, and await the convening of the next legislature for the authority to build said sewerage system, without the condition precedent, that they should own the water-works plant:

That the public interest and the public welfare require that ther-should be speedily determined the question of the said liability, if any, under said contract:

They are advised and charge the fact to be by reason of the fact hereinbefore averred that they are entitled as against the Vicks-

burg Water-Supply Company to have said contract cancelled and annulled, and as against the Vicksburg Water Works Company to a decree that said company have never acquired any rights in or to said contract, or if mistaken in this by reason of the matters and things stated, that are entitled to have the same annulled and cancelled. To the end that the said complainants may have said relief and such other and further relief as may appear just and proper: They pray that the said Vicksburg Water Supply Company Chester R. McFarland, superintendent of the same, The Vicksburg Water Works Company, and M. O. Crumpler, superintendent of same, be made parties defendant hereto and that they be subpœnaed to appear and make answer to this complaint and to abide and perform the decrees of this court:

57 That said Vicksburg Water Works Company and M. O. Crumpler in said answer be required true answers to make to the following interrogatories:—

Int. 1. When and how did you or either of you become the owners of the water-works plant formerly owned by the Vicksburg Water Supply Company?

Int. 2. Please append to your answers copies of all contracts and deeds whereon you base your claim and title to said works, and your claim to the right and privileges conferred on Samuel R. Bullock & Company, their assigns and successors under an ordinance of said city, approved November 19th, 1886.

Complainants will ever pray, &c.

(Signed) VOLLER & MOUNGER,
Sol's for Comp'ts.
MAGRUDER & BRYSON,
Sol's for Comp'ts.

STATE OF MISSISSIPPI, }
County of Warren. }

Personally appeared before me the undersigned a justice of the peace, in and for said county, the within-named W. L. Trowbridge, mayor of the city of Vicksburg, who being by me duly sworn says that the matters and things in the foregoing bill contained are true to the best of his knowledge and belief.

This the 7th day of December, 1900.

W. L. TROWBRIDGE,
Mayor of City of Vicksburg.

[SEAL.] JNO. W. POWELL,
Justice of the Peace.

58 This indenture made the first day of March in the year 1887 between the Vicksburg Water Supply Company, a corporation created by, and organized under the laws of Mississippi at the city of Vicksburg, party of the first part and hereinafter designated "the water company" and the Farmers' Loan and Trust Company, a corporation created by and organized under the laws of the State of New York part of the second part, hereinafter designated "the trustees." Witnesseth.

Whereas the water company was incorporated for the purpose of

conducting, maintaining and operating a system of water to supply the city of Vicksburg, Mississippi and its inhabitants with water and whereas in order to affect its corporate purposes the water company has determined to issue 250,000 of its coupon bonds in form as follows, and to secure the payment by mortgaging its property and franchises.

The Form of Coupon.

Number —. UNITED STATES OF AMERICA. $1,000.00.

City of Vicksburg, State of Mississippi, County of Warren.

Vicksburg Water Supply Company. Vignette.

First-mortgage Six per Cent. (6%) *Thirty* (30) *Year Gold Bond.*

Know all men by these presents, that the Vicksburg Water Supply Company is indebted to and hereby promises to pay Samuel R. Bullock and Company, or bearer one thousand ($1,000) dollars in gold coin of the present weight and fineness lawful money of the United States of America at the office of the Farmers' Loan and Trust Company in the city of New York on the first day of March in the year 1917, with interest thereon at the rate of six per cent. (6%) per annum payable at the same place in like gold coin on the first day- of March and September in each and every year until the majority hereof upon the presentation and surrender of the next coupon therefor as they respectively become due, free from all United States and municipal taxes levied or to be levied. This bond is one of the series of the two hundred and fifty (250) bonds of the like amount, tenure and date numbered from one (1) to two hun-
59 dred and fifty (250) both inclusive. Amounting in the aggregate to two hundred and fifty thousand dollars ($250,000), and is secured by and issue- subject to the provision of the first mortgage or deed of trust therein of even date herewith conveying to the said Farmers' Loan and Trust Company in trust for the benefit of the holders of the said series of bonds and the property and franchises of the said Vicksburg Water Supply Company now owned or hereafter to be acquired by it and more particularly described therein. This bond shall not become valid until the certificate indorsed herein shall have been signed by the said trustee. In witness whereof the said Vicksburg Water Supply Company has caused these presents to be signed by its president, attested by its secretary and its corporate seal to be hereto affixed, the first day of March, A. D. 1887.

VICKSBURG WATER SUPPLY COMPANY,
—— ——, *President.*
By attest, —— ——, *Secretary.*

Form of Coupon.

$30.00. $30.00.

The Vicksburg Water Supply Company hereby promises to pay to the bearer at the office of the Farmers' Loan and Trust Company

in the city of New York, on its surrender hereof, thirty ($30.00) dollars in United States gold coin on the — day of ——, 18— being six months' interest due on that day on its first-mortgage six per cent. (6 %) thirty-year gold bond.

—— ——, *Treasurer.*

Form of Trustees' Certificate.

Trustees' certificate.

It is hereby certified that this bond is one of the series described and referred to in the mortgage of deed of trust within mentioned.

THE FARMERS' LOAN AND TRUST COMPANY, *Trustee,*

—— ——, *Trustee,*

By —— ——, *Trustee.*

Now this indenture witnesseth that the water company to better secure the payment of the principal and interest of said bonds
60 ratably and without discrimination or preference according to the true intent and meaning thereof, and also for and in consideration of the sum of one ($1) dollar in money of the United States of America to it in hand paid by the trustee, a receipt of which is hereby acknowledged hath granted, bargained, sold, alien-, remised, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey and confirm unto the trustee and its successors forever all of its real and personal property, goods, chattels, now owned or which may hereafter be acquired by it, including its lands, water works, buildings, pump-houses, stand-pipes, reservoirs, machinery, pipes, mains, hydrants, apparatus and equipments situated in the city of Vicksburg, county of Warren, State of Mississippi, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining and the reversion and reversions, remainder and remainders, tolls, rents, issues, income, and profits accruing therefrom, also all and singular the corporate franchises, privileges, rights, liabilities, which the "water company" now has and can exercise or shall hereafter acquire and possess, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the water company, of and to the property above described, or hereafter acquired, and each and every part and parcel thereof, with the appurtenances, to have and to hold, all and singular the above granted and described premises with the appurtenances unto the trustee and its successor forever. In trust nevertheless and to and for the uses and purposes hereinafter expressed of and concerning the same for the equal *pro rata*, benefit and security of all who may become the lawful owners and holders of any of the bonds and coupons intended to be secured hereby without any provisions of priority of any bond over another by the name of priority in the time of issue or negligence or otherwise. And in order to carry out the purposes of this trust it is covenanted and agreed:

1st. Until default shall be made in the payment of the interest of said bonds according to their tenure or the terms of this instrument or in the payment to be made in the "sinking fund" as here-
61 after provided and as long as the condition and agreement herein contained shall be faithfully preserved the water company shall retain possession of the above granted and described property, and use, enjoy, and operate the same and the leases, issues, incomes and profits thereof to take, have and apply to and for its sole use and benefit but in such manner as will not impair the security hereby created.

2nd. Should any default be made in the payment of the principal or interest of the aforesaid bonds according to their terms or the terms of this instrument and should the same remain unpaid and in arrear for the space of six months then upon the written request of the holders of at least one-fourth of the aforesaid bonds then owing and outstanding so to do and in proper indemnification being made against the costs and expenses to be incurred the trustee or its successors shall have the right by its agent, attorney, or servants to enter into, upon and take possession of all and singular the property hereby conveyed or intended so to be, and to every part and portion thereof and have use and operate the same and exercise the privileges pertaining thereto and make such repairs replacements or improvements as it may in its discretion deem necessary for the proper preservation and operation of the said mortgages property and take, collect and receive the earnings, income, liens, issues, and profits, of the same, and after deducting the expenses incident thereto, including a reasonable compensation to the trustee and all taxes, rents, or assessments due thereupon to apply the money so arising from the said mortgage property to the payment in full of the interest coupon in default of said bonds, in the order that they may fall due, after paying such interest as shall be unpaid and in arrear to render the overplus if any, there be, and surrender the mortgage premises into the water company or its successors to be managed by it as if such default has never taken place. Provided however, that if the trustee shall take possession in case of default in the payment of the principal of the aforesaid bonds according to their terms or to the terms of the instrument or if such default be made while the trustee is already in possession after the payment of the interest and other expenses as above provided as the same
62 may *be* from time to time become due and payable, the trustee, shall apply the residue of said money to the payment and extinguishment of the principal to the aforesaid bonds ratably and without discrimination or provisions and shall continue in possession of and shall operate and manage the said mortgage property until the said principal is fully paid and satisfied, and after paying said principal and interest and other expenses in full shall render the overplus and surrender the mortgaged premises and property unto the water company or its successors free of and released from the rent hereby created and provided further that in case of default in the payment of interest in the manner and period aforesaid if the holders or at least a majority of the bonds then owing and out-

standing shall notify the water company and the trustee or their respective successors in writing before the interest so in default has been paid that they the said bondholders elect that the principal of all of the bonds secured hereby and then owing and outstanding become and be due and payable then upon such election being made and notice being given as aforesaid the principal of all of said bonds shall immediately become due and payable although the period therein limited for the payment thereof shall not have expired.

3rd. If default shall be made in the payment of the principal or interest of the aforesaid bonds according to their terms *of* the terms of *the terms of* this instrument and should the same remain unpaid and in arrear for the space of six months then it shall be lawful for the trustee or its successor on being indemnified as aforesaid and upon a written request of the holders of a majority of the said bonds then owing and outstanding. so to do after entry as aforesaid or other entry or without entry to use or dispose of all the property and franchises of every kind and description hereby conveyed and of benefit and equity of redem-tion of the water company and its successors and assigns and of persons claiming under them in and to the same on publication to the highest bidder after a notice thereof to be published in one or more newspapers of general circulation printed in the city of Vicksburg, State of Mississippi, and the city of New York, once each week for 12 successive weeks,
63 and on the day of sale and buy such from and other notices or requirements as may be necessary under the laws of the State of Mississippi. The sale to be held in the said city of Vicksburg, or in the city of New York, with power to the trustee to adjourn the same from time to time at its discretion by advertisement or announcement at the time and place of the proposed sale, and the attorney for the water company or its successors for that purpose by these presents authorize, constitute and appoint, to make, execute and deliver to the purchaser or purchasers thereof a good and sufficient deed or deed- in the law for the same in fee-simple or at the discretion of the trustee as aforesaid to foreclose and sell the equity of redemption to the water company or to other persons having a legal or equitable right or claims against or in or to the mortgaged premises, or any portion thereof by proceeding in law or equity or in any court, or tribunal of competent jurisdiction which sale so to be made in either of the modes herein prescribed shall forever be a perpetual bar in law and equity against the water company, its successors or assigns, and against all other persons claiming or to claim the said property or any part thereof, by from or under them or any of them, the water company hereby expressly waives the benefit and advantage of any and all valuation stay*ed* appraisement, redemption, or extension laws, and of all laws requiring a mortgage or other securities for money to be foreclosed for action therefor now in force and which may hereafter be in force under the laws of Mississippi.

4th. In case of a sale of the property hereinbefore mentioned in either of the modes here-before described the trustee shall apply the proceeds hereof after deducting the cost and expenses of said sale to

the payment in full ratably and without discrimination for preference in case there is a deficiency of the principal of all of said bonds, then due and outstanding and the interest due thereon to the time of such application rating the overplus if any there be unto the water company its successors or assigns.

5th. In the event of the sale under the terms of this mortgage it shall be lawful for any bondholder or bondholders or for the
64 trustee on behalf of such of them as may unite in authorizing it so to do to purchase the property and franchises hereby conveyed and the bonds and coupons held by the purchase, the bondholders shall receive in payment of the purchase-money so obtained at said sale by them or by the trustee on their behalf the said sum paid in cash equivalent to the amount which the purchase bondholders shall be entitled to out of the proceeds of such sale after deducting all legitimate cost and expenses provided however that the purchasing bondholders so request the trustee to purchase the said mortgaged property on their behalf shall contribute in cash their portion at the expense of said sale or in case of a purchase by the trustee of this section the property and franchises shall be held by it in trust for the benefit of such bondholders only as may have authorized it to purchase on their behalf and free for the lien of these presents.

6th. If the water company shall well and truly pay or cause to be paid the principal and interest of the said bonds when the same shall become due and payable according to the tenure of said bonds and coupons thereto attached and shall comply with all other requirements hereof according to the true intent and meaning of these presents then and in that event all of the estate, right, title, and interest of the trustee and its successors, in the trust hereby created shall cease, determine and be null and void, otherwise the same shall be and remain in full force and virtue.

7th. If at any time the trustee or its successors shall enter into and take possession of said property or the trustee to sell the same by reason of any default in the payment of any principal of interest of anything required to be done by the water company as herein provided the water company shall have the right at any time prior to the actual sale of said porperty to pay and satisfy in full the principal of said bond and the interest thereon to the date of payment together with all just and proper cost, charges and expenses paid or incurred by the trustee and a reasonable compensation for its services and upon such payment and satisfaction the trustee shall surrender to the water company all of said property hereby granted and shall
65 execute and deliver to the water company such instrument as the water company may deem necessary and discharge these presents and records and to revest in it the title to said property and franchises.

8th. The water company and its successors and all and every person or persons whomsoever lawfully or equitably deriving any estate, right, title or interest of in and to the hereinbefore-granted property put thereunder or in trust for them shall and will at any time or times hereafter upon reasonable request of the trustee or its

successors buy at the proper cost and charges in the law of the water company its successors, or assigns, make, do and execute or cause or procure to be made, done or executed all and every such further and other lawful and reasonable acts, conveyances, and assurance, in the law for the better and more effectual vesting and confirming the property and franchises hereby granted or intended so to be and especially such property and franchises as shall be hereafter acquired in and to the trustee or its successors forever in trust as aforesaid as by the trustee or its successors, or their *concern* learned in the law shall be reasonable devised, advised or required.

9th. Should the trustee herein named resign, for any reason whatever become incapacitated from acting under these terms it shall be lawful for the holders of the majority of the bonds then owing and outstanding intended to be secured hereby to nominate by an instrument or instruments in writing executed under their hands and seals, acknowledged in like manner, and the deed to be recorded in the State of Mississippi, such persons or corporation to act in the premises instead of such outgoing trustee as they shall deem fit upon a written acceptance of such persons or corporation so nominated and appointed, to be made and executed in like manner and deliver to the water company, he or it shall become vested with the same estate, rights, powers, and liabilities as if he or it had been expressly named as the trustee herein and thereupon all of the estate, right, title, and interest of the outgoing trustee shall be divested, ceased and determine and be null and void.

10. In any case herein provided which the trustee shall have the right to enter upon the said mortgaged premises or to do any other act to inforce any provision hereof the holder or holders *or* the majority of the outstanding bonds may by written instrument sign- from time to time, instruct, and require the trustee to waive, discontinue and defer the exercise of such right, absolutely or upon such terms as such majority may deem proper or as such majority may reverse or annul, the power of the trustee already exercised but the exercise of the aforesaid power of the trustee or the majority of the bondholders in case of one default shall in nowise affect their respective rights in case of a subsequent default.

11th. The trustee accepts the trust hereby created and its duties upon the following terms which are expressly agreed to, the recitals herein contained and made on behalf of the water company and not of the trustee.

The trustee shall be responsible only for its willful negligence or default and not for the act or default of any agent, attorney, or employee selected with reasonable discretion.

The trustee shall resign upon a notice to the water company of sixty days or such shorter notice as the water company may accept as sufficient.

The trustee shall not be bound to take any action toward the inforcement of any provision of this mortgage not to appear in or defend any suit or proceeding brought against it as such trustee unless previously indemnified to its reasonable satisfaction, against all cost

claim suits or liabilities incident to or which may result from such action or default nor to recognize any person as the holder of any of said bonds nor to take any action at his request even if indemnified as above provided, unless his bonds are submitted to the trustee for inspection and his ownership to the said bonds satisfactorily proved if disputed.

The trustee shall not be bound to record or file this mortgage or take any steps to make it a lien upon personal property or to renew or perpetuate, nor to insure the mortgage property.

67 The trustee shall have reasonable compensation for its services and be reembursed for all of its proper expenses in executing the trust hereby created and such compensation and expenses shall be at first charged upon the trustee's estate and fees.

12th. The holder or holders of any of the said bonds or coupons secured hereby shall not have the right to institute suit or proceedings to inforce any provision herein contained, unless the trustee shall refuse or neglect to institute the same after a written request from any bondholder or bondholders at a reasonable opportunity so to do and the tender or receipt of a reasonable indemnity against the cost and expense of said suit, or proceeding, by such written request and tender or receipt of a reasonable indemnity shall be a condition precedent to the commencement of any such suit or proceeding by any bondholder.

In witness whereof the Vicksburg Water Works Supply Company and the Farmers' Loan & Trust Company, have caused these presents to be signed in their respective corporate names by their respective presidents, and their corporate seals attested by their respective secretaries, to be hereto affixed the day and year first above written.

VICKSBURG WATER SUPPLY COMPANY,
By E. WALTHAM, *President.*

[SEAL.] Attest: CHARLES M. BERREAN, *Secretary.*

FARMERS' LOAN & TRUST COMPANY,
By R. G. ROLSTON, *President.*

[SEAL.] Attest: WILLIAM H. LEUPP, *Secretary.*

STATE OF NEW YORK, }
City & County of New York. }

Be it remembered that on this the 3rd day of March, in the year 1887, before me the undersigned Edwin F. Corey, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority and in the laws of the State of Mississippi, to take acknowledgements of deeds and etc. to be used and recorded therein, personally appeared E. Waltham, president, and Charles M. Berrean, secretary of the within-named Vicksburg Water Supply Company who severally acknowledged that they signed the within and foregoing instrument as such president and secretary,

sealed the same with the corporate seal of said company and
68 delivered the same with the corporate seal of said company,
and delivered the same as the act and deed of said company on the day and year therein mentioned.

And said E. Waltham of the said company being by me duly sworn did depose and say that he resides in the city of New York, *with* the seal affixed to the seal of the foregoing instrument *as* the corporate seal of the Vicksburg Water Supply Company and was thereto affixed by the authority of the said company, and that he as president together with Charles M. Berrean, as secretary subscribed their names thereto by like authority.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

E. F. COREY,
Commissioner for the State of Mississippi,
Office, 60 Wall Street, N. Y.

STATE OF NEW YORK, }
City & County of New York. }

Be it remembered that on this the 5th day of March, in the year 1887, before me the undersigned Edwin F. Corey, a commissioner, duly commissioned and qualified by the executive authority and under the laws of the State of Mississippi to take acknowledgements of deeds, and etc., to be used and *are* recorded therein, personally appeared Roswell G. Robertson, president and William H. Luepp, secretary, of the within-named The Farmers' Loan & Trust Company, who severally acknowledged that they signed the within-named and foregoing instrument as such president and secretary, sealed the same with the corporate seal of said company and delivered the same as the act and deed of said company on the day and year therein mentioned and the said Roswell G. Robertson of the said Farmers' Loan and Trust Company being by me duly *sownr* did depose and say that he resides on the city of New York, that the seal affixed to the foregoing instrument is the corporate seal of
the Farmers' Loan and Trust Company, and was thereto af-
69 fixed by the authority of said com-any that he as president
with William H. Luepp, as secretary, subscribed their names thereto by like authority.

In witness whereof I have hereto set my hand and affixed my official seal, the day and year last aforesaid, written.

[SEAL.] EDWIN F. COREY,
Commissioner for the State of Mississ.,
Office, 60 Wall Street, N. Y.

STATE OF MISSISSIPPI, }
County of Warren. }

I, George T. Hardy, clerk of the chancery court of said county hereby certifies that the foregoing instrument was filed in my office for record on the 10th day of March, 1887 at 12.45 o'clock p. m. and duly recorded in Deed Book Number 63 pages 48 to 57, inclusive.

Witness my hand and seal of court this 11th day of March, 1887.
[SEAL.] GEORGE T. HARDY, *Clerk.*

70 UNITED STATES GOVERNMENT,
For the Western Division of the
Southern District of Mississippi.

Know all men by these presents that we, The Vicksburg Water Works Company principal, and M. O. Crumpler and S. S. Hudson, sureties, are held and firmly bound unto the Mayor and Aldermen of the City of Vicksburg, Mississippi, in the sum of $8,000.00 to be paid to the said Mayor and Aldermen, their heirs, executors, administrators, assigns or successors for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally firmly by these presents.

Sealed with our seals and dated this the 16th day of February, 1901.

The condition of the above obligation is such, that whereas the *above bond is such that the* Vicksburg Water Works Company of Vicksburg, Mississippi did on the 14th day of February 1901 obtain from the Honorable H. C. Niles, an injunction restraining the Mayor and Aldermen of the City of Vicksburg, its officers, servants, employés or agents, attorneys counsel and solicitors, whereby they were absolutely refrained from assuming to abrogate and take away the franchise and contract rights on complainant and from further endeavoring to disable complainant from carrying on its business and to coerce said complainant to sell its water works to the defendant for the said inadequate and arbitrary price and from otherwise carrying on the unlawful conspiracy set out in said bill of complaint and from perpetuating any minutes or ordinances or resolution of its own, whereby it denies liability or seeks to annul or refuses to pay complainant contract price for water, and that defendant be compelled to pay the Vicksburg Water Works Company for water used by it as per the ordinance price as aforesaid, and to continue to do so until this cause is heard upon its merits, that the rights of all parties may be preserved and from any further proceedings against said complainant touching any of the matters in
71 said bill contained, until this honorable court shall make another order to the contrary hereof.

Now if said Vicksburg Water Works Company in case said injunction shall be dissolved within thirty days thereafter well and truly pay and satisfy all such costs and damages as shall wrongfully result from suing out its injunction and shall abide by and perform the decree of said court, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

VICKSBURG WATER WORKS CO.,
By M. O. CRUMPLER, *Sec. & Treas.*
M. O. CRUMPLER.
S. S. HUDSON.

Signed, sealed and delivered in the presence of,
L. B. MOSELEY, *Clerk,*
C. D. BANKS, *D. C.,*
Witnesses.

72 Bond. Filed February 16th, 1901. L. B. Moseley, clerk. C. D. Banks, D. C. S. S. Hudson, att'y for complainant.

73 *Injunction Writ.*

UNITED STATES:

Circuit Court of the United States of the Southern District of Mississippi for the Western Division Thereof.

To the Mayor and Aldermen of Vicksburg, Mississippi, its officers, servants, employés, or agents, attorneys, counsel, solicitors, Greeting:

Whereas, a bill of complaint has been lately exhibited in the circuit court for the southern district of the western division of Mississippi, by the Vicksburg Water Works Company to be relieved touching the matters in said bill contained, and praying for an injunction restraining you as hereinafter, set forth, and obtained a fiat of the Honorable H. C. Niles, judge, granting said injunction, and bond and security having been given as required by said fiat and statute, we therefore strictly enjoin and command you under penalty of contempt of court that you absolutely refrain from assuming to abrogate and take away the franchise and contract rights of complainant, and from endeavoring to disable complainant from carrying on its business, and to coerce said complainant to sell its water works to the defendant for the said inadequate and arbitrary price, and from otherwise carrying on the unlawful conspiracy set out in said bill of complaint, and from perpetuating any minutes, or resolutions or ordinances of its own, whereby it denies liability or seeks to annul, or refuses to pay complainant contract price for water, and that defendant be compelled to pay the Vicksburg Water Works Company for water used by it as per the ordinance price as aforesaid, and to continue to do so until this cause is heard upon its merits that the rights of all parties may be preserved, and from any further proceedings against said complainant touching any of the matters in said bill contained, until this honorable court shall make another order to the contrary hereof.

In testimony whereof, I, the undersigned clerk of the circuit court of the United States for the southern district of the
74 western division thereof, have hereunto set my hand and affixed the seal of said court at Vicksburg, Mississippi, this the 16th day of February, A. D. 1901.

L. B. MOSELEY, *Clerk.*
[SEAL.] C. D. BANKS, *D. C.*

To the Uuited States marshal for the southern district of the western division of Mississippi, to serve and return.

75 Received at Biloxi, Mississippi, February 19th 1901, and executed at Vicksburg, Mississippi, by reading this process to W. L. Trowbridge, mayor of the city of Vicksburg, Mississippi, and

handing to him a true copy thereof, at the hour of 4.40 p. m. this February 21st, 1901.

F. W. COLLINS,
U. S. Marshal,
By R. O. EDWARDS, *Deputy.*

Marshal's fees $4.64.

76 Entered No. 436 page 85 Filed February 16th 1901. At 3 o'clock p. m. L. B. Moseley, clerk. C. D. Banks, D. C. Returned executed and filed April, 20th 1901. L. B. Moseley, clerk.

77 VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

To the Honorable H. C. Niles, judge of the United States circuit court in and for the western division of the southern district of Mississippi thereof, sitting at Vicksburg:

Your orator by way of amendment and supplemental to its original bill heretofore filed against the defendant would respectfully state that since the filing of the said original bill to wit; on the 16th, day of February, 1901.

1st. Your orator would respectfully state that since the passage and approval of the act of the legislature entitled, "An act authorizing the mayor and aldermen of the city of Vicksburg to issue bonds to the amount of three hundred and seventy-five thousand ($375,000) dollars, to purchase or construct, equip and maintain water-works system, construct and establish a sewerage system to purchase grounds for, erect and equip a city hall, construct the necessary building for the hospital medical college, and for other purposes." Said act is to be found on page 180, *et seq.* of the sheet acts of the said State and in accordance with its terms and provisions a pretended election was held on the 3rd day of July 1900, under the authority of a pretended resolution passed by the defendant *on* the question of bonding the city for said amounts and purposes was pretended to be submitted to the registered and qualified voters of said city under its act, which propositions were carried by a small majority of the voters, which question was in words and *and* figures as follows to wit: "Be it resolved by virtue of the authority vested in the mayor and aldermen of the city of Vicksburg, by the act of the legislature of Mississippi entitled An act to authorize the mayor and aldermen of the city of Vicksburg, to issue bonds to the
78 amount of three hundred and seventy-five thousand ($375,000) dollars, to purchase or construct, equip and maintain a water-works system, construct and establish a sewerage system to purchase grounds for, erect and equip a city hall, construct the necessary building for the hospital medical college and for other purposes. Approved March 9th, 1900.

An election shall be held on the third (3) day of July on which day the question shall be submitted to the registered and qualified voters of said city whether the bonds of said city to the amount of

three hundred and fifty thousand ($350,000) dollars, to purchase or construct, equip and maintain a water-works system, construct and establish a sewerage system to purchase grounds for, erect and equip a city hall; shall be sold and issued for the above-named purposes.

Be it further resolved that twenty (20) days' notice shall be given in the manner provided for in said act, of the date, the amount of the bonds to be issued, and the purposes for which the same are issued. The ayes and nays being called on the motion that the said resolution be adopted, prevailed affirmatively with the following votes—

Ayes—Homberger, Conghlin, Montgomery and Walsh.

Nays—Fousses, Campbell, and Hayes."

Said proporsition will be found contained in Minute Book "H" page 444 of the records of the minutes of the defendant.

2nd. Your orator respectfully shows that the proposition submitted to the qualified electors to be voted on to bond the city contains more than one object, in fact several distinct and entirely independent propositions, which were pretended to be submitted, as a whole to the qualified voters of said city, when they should have been submitted separately unaided by any other proposition and should have been so acted upon by the board of mayor and aldermen in their authority to authorize the submission of the same to the voters, and said acts of the mayor and aldermen should have been an ordinance and is therefore void and of no effect.

For these reasons including those already mentioned in the original bill in this cause the said bonds authorized to be issued
79 and sold and said act and resolutions of said board of mayor and aldermen and said election are illegal, void, unauthorized and unconstitutional.

3rd. Your orator would further show as before stated in the original bill of complaint in this cause, the defendant caused its charter to be amended by the legislature of the State of Mississippi in 1886 to provide for the erection and maintenance of a water-works system to supply the said city with water or to contract with party or parties who should build and operate water works and the city having elected to enter into a contract with S. R. Bullock and Company and assigns on the — day of November, 1886, to provide defendant, The City, and inhabitants thereof with water for public and domestic purposes for thirty (30) years, at a stipulated price as agreed upon by said ordinance. Therefore said city by its contract and ordinance with S. R. Bullock and Company and assigns are precluded from issuing and selling bonds to build, construct, maintain and operate a water works of its own, as provided by said legislative act and said resolution and said election of 1900; in competition with your orator against its own contract.

The premises considered, your orator prays that this honorable court will enjoin the defendant from issuing and selling said bonds for the purpose of building and constructing water works of its own in competition with your orator and in addition thereto that this honorable court will decree said act, resolution and election to be invalid and unconstitutional, and that the defendant be precluded

and restrained and enjoined from constructing water works of its own in said city, until the expiration of your orator's contract. And that the defendant be required to answer this amended bill without making any oath thereto and that your orator be entitled to and have the benefit of all general and special relief as may be just and right.

And as in duty bound your orator will ever pray.

M. O. CRUMPLER.

80 Personally appeared before me L. B. Mosley, of the United States court in and for the western division of the southern district of the State of Mississippi, one, M. O. Crumpler, superintendant and general manager of the Vicksburg Water Works Company and who is an authorized agent of said company — makes oath that the foregoing matters and facts stated in the said foregoing amended bill of complaint of its own knowledge are true and correct and those stated on the information and belief, it believes to be true and correct.

Witness my hand and seal of office this 23 day of April, A. D. 1901.

[SEAL.]

L. B. MOSLEY, *Clerk.*
C. D. BANKS, *D. C.*

S. S. HUDSON,
A. N. EDWARDS,
Att'ys for Complainant.

81 41. Vicksburg Water Works Compauy *vs.* The Mayor & Aldermen of the City of Vicksburg. Filed April 23rd, 1901. L. B. Mosley, clerk. C. D. Banks, deputy clerk. S. S. Hudson, attorney, for complainant.

82 In the Circuit Court of the United States in and for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG, Defendant.

The defendant by protestation not confessing or acknowledging all or any of the matters and things, in said plaintiff's bill of complaint contained, to be true in such manner and form as the same are therein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth:—

That complainant has not stated such a case as entitled him to any relief in this honorable court:

Because: The resolution adopted by the board of mayor and aldermen of November 7th 1900 which is in words and figures as follows:—

"That the mayor be and he is hereby instructed to notify the Vicksburg Water Works Company that the mayor and aldermen deny any liability upon any contract for the use of the water-works

hydrants: that from and after August 1900, they will pay a reasonable compensation for the use of said hydrants.

That the city attorney shall take such action as shall be necessary to determine the rights of the city in the premises," was not an action on the part of the board of said mayor & aldermen which assumed to abrogate or take away any of the rights of the said complainant and it is manifest, that no such intention or effect can be imputed to such resolution, and said bill does not charge any other act of conspiracy or design on the part of said mayor and aldermen whereby they assume to abrogate and take away the franchise or contract rights of the said complainant in contravention of the Constitution of the United States.

83 That the said resolution does not seek to distroy or impair any contract, but merely denies legal liability thereunder; and because the act of the legislature of the State of Mississippi approved on the — day of —— does not impair the obligation of the contract made with Samuel R. Bullock & Company as averred in said bill; and because all of the other averments in said bill contained, whereby the defendant is charged with acts of conspiracy to abrogate and take away the franchise and contract rights of the complainant in contravention of the Constitution of the United States are vague and indefinate and constitute no ground for relief:

Wherefore defendant says that this court has not as appears by said bill any jurisdiction to enable it to entertain said bill of complaint.

W. J. VOLLER,
MAGRUDER, BRYSON & DABNEY,
Sol's for Def't.

STATE OF MISSISSIPPI,
County of Warren, City of Vicksburg.

Personally appeared before the undersigned a notary public in and for the said city, county and State, W. L. Trowbridge, mayor of said city of Vicksburg, who after being by me duly sworn on oath states that the foregoing demurrer was not interposed for the purpose of delay.

W. L. TROWBRIDGE,
Mayor of City of Vicksburg.

Sworn to and subscribed before me this, the 6th day of May, 1901.

P. L. HENNESSEY,
Notary Public.

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

W. J. VOLLER,
MAGRUDER, BRYSON & DABNEY,
Sol's for Defendant.

84 Vicksburg Water Works Company *vs.* The Mayor & Aldermen of the City of Vicksburg. Demurrer. Filed April 30th, 1901. L. B. Moseley, clerk. C. D. Banks, D. C.

85 In the Circuit Court of the United States in and for the western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, Defendant.

For further plea in this behalf the defendant pleads and says:

That this court is without jurisdiction to hear and determine the matters in controversy raised by said bill of complaint.

Because: All of the questions involved in said controversy between said complainant and said defendant were taken cognizance of by the chancery court of Warren county, Mississippi, wherein a suit was instituted by the defendant against the complainant on the — day of —— and is now there pending:

That it appears form complainant's bill herein filed that the only matter in controversy between the complainant and the defendant is, as to whether the contract made with Samuel R. Bullock & Company and his assigns as aforesaid has been transferred to the said complainant and whether the same is now in force against this defendant.

That no act is alleged by the complainant as having been done by the State of Mississippi, or this defendant which in any way affects the questions of said liability or has any effect or was contemplated to have such effect upon said contract.

That said suit instituted in the chancery court as aforesaid is in words and figures as follows to wit:

That the said chancery court has jurisdiction of the questions raised by this complainant's bill and that this honorable court is without jurisdiction to hear and determine the same.

86 All of which things the said defendant avers to be true and pleads the same to the jurisdiction of this court.

W. J. VOLLER.
MAGRUDER, BRYSON & DABNEY.

STATE OF MISSISSIPPI,
County of Warren, City of Vicksburg.

Personally appeared before the undersigned a notary public in and for the said city county and State, W. L. Trowbridge, mayor of said city of Vicksburg, who being by me duly sworn on oath states that the matters and facts states in the foregoing pleas are true and correct as therein stated, and that this plea is not interposed for the purpose of delay.

W. L. TROWBRIDGE,
Mayor of City of Vicksburg.

Sworn to and subscribed to before me this, the 6th day of May, 1901.

P. L. HENNESSEY,
Notary Public.

We hereby certify that in our opinion the foregoing plea is well founded in point of law.

W. J. VOLLER,
MAGRUDER, BRYSON & DABNEY,
Sols. for Defendant.

87 Vicksburg Water Works Company *vs.* The Mayor & Aldermen of the City of Vicksburg. Plea to the jurisdiction. Filed April 30th, 1901. L. B. Moseley, clerk. C. D. Banks, D. C.

88 In the Circuit Court of the United States in and for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG, Defendant.

The plea of the defendant- The Mayor & Aldermen of the City of Vicksburg to the bill of complaint exhibited against them says (not waiving the demurrer herein filed):

The defendant-, The Mayor & Aldermen of the City of Vicksburg by protestation not confessing or acknowledging all or any part of the matters and things in said bill mentioned to be true in such manner and form as the same are therein set forth and alleged do plead thereto and for plea say:

That on the — day of March 1887 the Vicksburg Water Supply Company did not as averred in said bill make, execute and deliver a deed of trust "conveying all franchises, ordinances and contracts together with all the other property of whatsoever kind or nature;" that the said complainant was particular in appending as exhibits copies of all other writings referred to, but did not append a copy of the said deed of trust; that the said deed of trust executed by said water supply company as aforesaid conveyed the property described therein as follows: "All of its real and personal property, goods and chattels now owned or which may hereafter be acquired by it, including its land, water works, buildings, pump-houses, stand-pipes, reservoirs, machinery, pipes, mains, hydrants, apparatus and equipments situated in the city of Vicksburg, county of Warren, State of Mississippi, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and the reversions, remainder and re-
89 mainders, tolls, rents, issues, income and profits accruing therefrom, also all and singular the corporate franchises, privileges, rights, liabilities which the water works company now has and can exercise, or shall hereafter acquire and possess. And, also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in equity as in law of the water company of, in and to the property above described or hereafter acquired, and each and every part or parcel thereof, with appurtenances.

That afterwards as averred *in* said deed of trust was foreclosed and the property therein described was sold to the complainant and the defendant now pleads that the contract made with Samuel R. Bullock & Company, as averred in said bill, was not embraced in said description and no interest in or to the same was by said sale conveyed to complainant and the said complainant did not thereby acquire any right against the defendant.

That the so-called quitclaim which was executed on the 18th day of October 1900, and which was signed as by Whitney Conant, president of the Vicksburg Water Supply Company, as averred in said bill and is appended as Exhibit "G" falsely states, the description of the property which is contained in said deed of trust.

That the said Conant, president, and W. E. Snow, secretary, had no authority whatever from the Vicksburg Water Supply Company to make any such quitclaim.

That upon its face it appears "that all of the corporate franchises, privileges and rights which the Vicksburg Water Supply Company had or could exercise," had been before the date of said quitclaim deed, sold at foreclosure under said deed of trust, and that the Vicksburg Water Supply Company, was at the time, a defunct organization, without the right to exercise any corporate function whatever, all of which matters and things, the said defendant avers, to be true and is ready to verify, and pleads the same to said bill and prays judgment whether he ought to be compelled to make further answer to said bill. And for further plea in this behalf the defendant says:

90 That it is not true as averred in said bill that the said Samuel R. Bullock & Company were empowered by said contract and ordinance, between them and the said defendant to organize and create a water works company and to sell and assign said contract and ordi-ances to any water company who would supply said city and its inhabitants in accordance with the terms and provisions of said contract and accept the terms and provisions thereof and now pleads that by the 5th section of said contract it is provided as follows: "That the said Samuel R. Bullock & Company their associates, successors, and assigns may procure the organization of a water works company under the laws of any State and may assign to it all the rights and privileges acquired hereunder, provided that the said assignment shall not invalidate or effect the bond required by section 7 hereof, and no assignment thereof shall be valid unless such assignee shall in writing to said board of mayor & aldermen accept this ordinance and become bound by its terms and obligations and the said board of mayor & aldermen shall pass and enact such further and other ordinances in favor of the said corporation the rights and privileges hereby granted."

That afterwards to wit: on the — day of —— in pursuance of the authority conferred by this section, the said Samuel R. Bullock & Company, did cause to be organized a corporation under the laws of the State of Mississippi known and designated as the Vicksburg Water Supply Company to which corporation said contract was assigned by the said Samuel R. Bullock & Co., and became bound

with the consent of the said mayor & aldermen to the terms of said contract:

That by said section it was contemplated and intended that no assignment of said contract should be made except by the said Samuel R. Bullock & Company to a single corporation to be by them used organized and the transfer to be approved and accepted by the said city, so that the said Vicksburg Water Supply Company had no power or authority to assign said contract either by said deed of trust, or otherwise, to any one, and the said defendant has
91 not approved or consented to any assignment by said Vicksburg Water Supply Company of said contract all of which matters and things, defendant avers to be true and pleads the same to said bill and prays a judgment of this court whether it ought to be compelled to make further answer to said bill.

W. J. VOLLER,
MAGRUDER, BRYSON & DABNEY.

STATE OF MISSISSIPPI,
County of Warren, City of Vicksburg.

Personally appeared before me the undersigned a notary public in and for the said city, county and States, W. L. Trowbridge, mayor of the said city of Vicksburg, who being by me duly sworn on oath states that the matters and facts in the foregoing plea are true and correct as therein stated, and that this plea is not interposed for the purpose of delay.

W. L. TROWBRIDGE,
Mayor of City of Vicksburg.

Sworn to and subscribed before me this the 6th day of May, 1901.

P. L. HENNESSEY,
Notary Public.

We hereby certify that in our opinion the foregoing plea is well founded in point of law.

W. J. VOLLER,
MAGRUDER, BRYSON & DABNEY,
Sols. for Defendant.

92 Vicksburg Water Works Company *vs.* The Mayor & Aldermen of the City of Vicksburg. Plea & answer. Filed April 30th, 1901. L. B. Moseley, clerk. C. D. Banks, D. C.

93 VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Now comes the complainant in the above-styled cause and moves the court to strike from the file the pleas, demurrers and answers in this cause because all of said pleas, demurrers and answers are improperly pleaded.

S. S. HUDSON,
Att'y for Complainant.

94 Number 41. Vicksburg Water Works Company *vs.* The Board of Mayor & Aldermen of Vicksburg. Filed June 3rd,
1901. L. B. Moseley, clerk. C. D. Banks, D. C.

95 In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

The defendants now come and move the court for a dissolution of the injunction heretofore issued against them and for ground of said motion say:—

1st. Because said injunction was improvidently issued.

2nd. Because the bill and amended bill filed by said complainants do not raise any question or propound any demand or right cognizable within the jurisdiction of this court.

3rd. There is no equity upon the face of said bills.

4th. Because the injunction is in many respects indefinite and vague and so uncertain that it — not possible to determine what acts are embraced in said injunction.

5th. Because said injunction should be dissolved by reason of the matters of law and fact set forth in defendant's answer to said bill.

W. J. VOLLER,
MAGRUDER, BRYSON & DABNEY,
For Motion.

96 No 41. Vicksburg Water Works Company *vs.* Mayor & Aldermen of the City of Vicksburg. Motion to dissolve the injunction. Filed June 21st 1901. L. B. Moseley, clerk. C. D. Banks, D. C.

97 In the Circuit Court of the United States for the Western Division of the Southern District.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

The answer of the Mayor & Aldermen of the City of Vicksburg to the original and supplemental bill of complaint exhibited against them in this court by the complainant named therein, for answer to so much and to such parts of said bill as they are advised it is material or necessary for them to answer these respondents say:

They admit that the board of mayor & aldermen on November 7th, 1900 adopted a resolution which is in words and figures as follows:

"That the mayor be and he is hereby instructed to notify the Vicksburg Water Works Company that the Mayor and Aldermen deny any liability upon any contract for the use of the water-works

hydrants: that from and after August 1900, they will pay a reasonable compensation for the use of said hydrants.

That the city attorney shall take such action as shall be necessary to determine the rights of the city in the premises." But respondents say that this action on the part of the board of said Mayor & Aldermen "did not assume to abrogate or take away" any of the rights of the said complainant existing by virtue of the alleged contract and it is manifest that no such intention or effect can be imputed to such resolution.

That the said resolution does not seek to destroy or impair any contract but merely denies legal liability thereunder; that the act of the legislarture of the State of Mississippi approved on the — day of —— does not impair the obligation of the contract made with Samuel R. Bullock & Co. as averred in said bill.

That the averments in said bill in this regard do not constitute any ground for relief cognizable within the jurisdiction of this court; that complainant has not averred and set forth in its bill any
98 act having the effect to impair the obligation of said contract and this court is therefore without jurisdiction to hear and determine the matters in said bill contained,

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and they crave that they may have the same benefit of objection to said bill on said grounds as if formally demurred to and pray judgment of the same accordingly.

Respondents say that all of the questions involved in this controversy between said complainant and said defendant were taken cognizance of by the chancery court of Warren county, Mississippi, wherein a suit was instituted by the defendants against the complainant on the — day of —— and is now there pending.

That it appears from complainant's bill herein filed that the only matter in controversy between the complainant and the defendants is, as to whether the contract made with Samuel R. Bullock & Co., and his assigns as aforesaid has been transferred to the said complainant and whether the same is now in force against this defendant.

That no act is alleged by the complainant as having been done by the State of Mississippi or these defendants which in any way affects the questions of said liability or was contemplated to have such effect upon said contract. That a copy of the bill of complaint in said suit instituted in the chancery court aforesaid is herewith filed as Exhibit "I."

That the said chancery court has jurisdiction of the questions raised by this complainant's bill and that this honorable court is without jurisdiction to hear and determine the same; all of which things the defendant avers to be true and pleads the same to the jurisdiction of this court and prays judgment accordingly, and as if formally pleaded.

[Matter enclosed between rules cancelled across the face with pencil.]

These respondents admit that there is a provision in the contract made between the city and Samuel R. Bullock & Co., whereby the exclusive right is given to Samuel R. Bullock & Co., their successors and assigns for the period of thirty (30) years to maintain a system of water works and to supply said city and its inhabitants with water; that said provision is in words as follows:—

"That in consideration of the public benefit to be derived therefrom the exclusive right and privilege is hereby granted for the period of thirty (30) years from the time that this ordinance takes effect unto Samuel R. Bullock & Co., their associates, succes-
99 sors and assigns, of erecting, maintaining, and operating a system of water works in accordance with the terms and provisions of this ordinance, and of using the streets, alleys, public squares and all other public places within the corporate limits of the city of Vicksburg, Mississippi as they now exist or may hereafter be extended and within such other territory as may now or hereafter be under its jurisdiction for the purpose of laying pipes, mains and other conduits and erecting hydrants and other apparatus for conducting and furnishing and adequate supply of good wholesome water to the city of Vicksburg, Mississippi, and to its inhabitants for public and private use and for making repairs and extensions to said system from time to time during the period in which this ordinance shall be in force."

These respondents nevertheless say that no power was even conferred either directly or indirectly upon said mayor & aldermen whereby they were authorized, to grant by contract, to any person or persons the exclusive privilege for any period of time to furnish and supply said city and its inhabitants with water. That said provision in said contract, is unauthorized, illegal and void and respondents, submit that so much and such parts of said bill as set forth in said provision, in said contract, are insufficient to constitute any ground of relief, and they pray judgment thereof, and crave the same benefit of this objection as if formally demurred to.

Respondents further answering say: That on the — day of March 1887 the Vicksburg Water Supply Company did not as averred in bill make, execute and deliver a deed of trust "conveying all its franchises ordinances and contract together with all other property of whatsoever kind or nature," (that the said complainant was particular in appending as exhibits copies of all writings referred to, but did not append a copy of the said deed of trust).

That the said deed of trust executed by said water supply company as aforesaid, conveyed the property described therein as follows:

"All of its real and personal property goods, and chattels now owned or which may be hereafter acquired by it including its lands, water works, buildings, pump-houses, stand-pipes, reservoirs, ma-
chinery pipes, mains, hydrants, apparatus and equipments
100 situated in the city of Vicksburg, Mississippi, county of Warren together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, tolls,

rents, issues, income and profit accruing therefrom, also all and singular the corporate franchises, privileges, rights, liabilities which the water company now has and can exercise or shall hereafter acquire and possess. And also, all the estate, right, title, interest, property, possession claim, and demand whatsoever, as well in equity as in law of the water company, of, in and to the property above described or hereafter acquired, and each and every part or parcel thereof, with appurtenances."

That thereafter as averred in said bill said deed of trust was foreclosed and the property therein described was sold to the complainant and the defendants now plead that the contract made with Samuel R. Bullock & Company as averred in said bill, was not embraced in said description and no interest in or to the same was by said sale conveyed to complainant and the said complainant did not thereby acquire any right against the defendants.

That the so-called quitclaim deed which was executed on the 18th day of October, 1900, and which was signed by Whitney Conant, president of the Vicksburg Water Supply Company, as averred in said bill and is appended as Exhibit "G" falsely states the description of the property which is contained in said deed of trust.

That the said Conant president, and W. E. Snow secretary, had no authority whatever from said Vicksburg Water Supply Company to make any such quitclaim.

That upon its face it appears "that all of the corporate franchises, privileges and rights which the Vicksburg Water Supply Company had or could exercise," had been before the date of said quitclaim deed, sold at foreclosure under said deed of trust, and that the Vicksburg Water Supply Company, was at the time, a defunct organization, without the right to exercise any corporate function whatever, all of which matters and things, the said defendant
101 avers to be true and is ready to verify, and pleads the same to so much and such parts of said bill and prays judgment whether he ought to be compelled to make further answer to said part and pleads the same benefit hereof as if formally pleaded.

Respondents further say: That it — not true as averred in said bill that the said Samuel R. Bullock & Company were empowered by said contract and ordinance between them and the said defendants to organize and create a water works company and to sell and assign said contract and ordinance to any water company who would supply said city and its inhabitants in accordance with the terms and provisions of said contract and accept the terms and provisions thereof and now says that by the 5th section of said contract it is provided as follows: "That the said Samuel R. Bullock & Company their associates, successors and assigns may procure the organization of a water works corporation under the laws of any State and may assign to it all the rights and privileges acquired thereunder, provided that the said assignment shall not invalidate or effect the bond required by section seven hereof and no assignment thereof shall be valid unless such assignee shall in writing to said board of mayor & aldermen accept this ordinance and become bound by its terms and obligations and the said mayor & aldermen shall pass and enact

such further and other ordinances, and do and perform such other acts including the repassage of this ordinance in favor of the said corporation as may be necessary to invest in the said corporation the rights and privileges hereby granted."

That afterwards, to wit, on the — day of —— in pursuance of the authority conferred by this section the said Samuel R. Bullock & Co. did cause to be organized a corporation under the laws of the State of Mississippi known and designated as the Vicksburg Water Supply Company, to which said corporation said contract was assigned by the said Samuel R. Bullock & Company, and became bound with the consent of the mayor & aldermen to the term of said contract.

That by said section it was contemplated and intended that no assignment of said contract should be made except by the said Samuel R. Bullock and Company to a single corporation to
102 be by them organized and the transfer to be approved and accepted by the said city, so that the said Vicksburg Water Supply Company had no power or authority to assign said contract either by said deed of trust or otherwise, to any one, and the said defendant has not approved or consented to any assignment by said Vicksburg Water Supply Company of said contract, all of which matters and things defendants aver to be true and pleads the same to such parts and so much of said bill and prays a judgment of this court whether it ought to be compelled to make further answer to said part of said bill and crave benefit hereof as if formally pleaded.

These respondents further say: That by the 14th section of the contract averred in said bill to have been enetered into between the complainant and these respondents by ordinance adopted on the 18th day of November 1886 it is provided as follows:

"Be it further ordained that for the purpose of paying the obligation- and liabilities of the said mayor & aldermen of the city of Vicksburg, which shall accrue to the said Samuel R. Bullock & Co., their associates, successors and assigns by virtue of the terms and conditions of this ordinance, the said mayor & aldermen of the city of Vicksburg or other duly constituted municipal authorities shall annually *and* cause to be collected upon the taxable property of said city a special tax, to be known and designated as the water-works tax sufficient to meet and pay all of said obligations and liabilities during the continuance of this contract and until all of said obligations and liabilities shall be paid and discharged."

That there was no warrant or authority on the part of said mayor and aldermen to make any such provision or contract; that said stipulation is in contravention of the charter of said city and is illegal and void so that said contract is wholly without effect all of which matters and things, respondents aver to be true and plead the same to said part of said bill and pray the judgment of this court whether it ought to make further answer thereto, and craves benefit hereof as if formally pleaded.

103 Respondents deny that on the 19th day of November 1886 the said city of Vicksburg received any competitive bids for the erection of water works in said city and they now show the fact

to be that a corporation then known as the Vicksburg Water Works Company a short while before said date made overtures to said city and proposed to enter into a contract for the building of water works and that about that time the said Samuel R. Bullock & Company, also proposed to enter into a contract with the said city for said purpose; that a contract arose between these two parties in their endeavors to obtain such a contract from said city; that their propositions were in writing and open and that it was at this stage of the discussion that it was proposed that the consideration of said question should be deferred to a special meeting and all parties were notified to present bids. That in point of fact no other bids were offered and the board proceeded to consider the proposition of the two parties already made and thereupon awarded said contract to Samuel R. Bullock & Company.

Respondents further answering show: That by the 25th section of the charter of said city it is provided that the board of mayor and aldermen should not make any contract involving certain expenditures except upon advertisement for sealed purposes.

That both by the letter and spirit of said provision the power to make any contract for a supply of water could only be exercised by the said mayor & aldermen after an advertisement for bids for same and in pursuance of the bids made:

Yet respondents say that said mayor & aldermen did not advertise for bids for a contract to supply water, as required by said charter and that the contract made with Samuel R. Bullock & Company was not made in pursuance of any such advertisement so that respondents say that said contract so made was unauthorized and is illegal and void, which facts respondents aver to be true and plead the same to such part of said bill and prays judgment and craves the benefit thereof as if formally pleaded.

104 Respondents further answering say:—That by the 12th section of said contract it is provided that the property and business of said water-works plant should be exempt from taxation for the period of five years and thereafter should not be assessed for more than fifty thousand dollars ($50,000): that said provision is unconstitutional and void and in consequence said contract is unauthorized and illegal.

Respondents admit that passage of the ordinance on the 19th day of November 1886, a copy of which appears as Exhobit "B" to complainant's bill but they deny that the same even when accepted by the said Samuel R. Bullock & Co., constituted a valid contract between said Bullock & Co. and respondents. They admit that said alleged contract was assigned by said Bullock & Company to the said Vicksburg Water Supply Company, which latter company they deny to be now a going concern, but aver the same is defunct without assets, property, franchises or organization and that it has been so defunct since the 8th day of August 1900.

These respondents admit that on the 20th day of November 1900, it received the notice marked Exhibit "H" to said bill, wherein it is asserted that the Vicksburg Water Works Company claimed to own as assignee the contract made with Samuel R. Bullock & Co.

and gave notice that said company had agreed to be bound by the terms of said contract.

These respondents now show to the court, that long prior to said date it had been currently reported that said water works company claimed not only to own said plant but also were subrogated to the rights of Samuel R. Bullock & Company, under said contarct; that in consequence thereof the mayor of the city of Vicksburg, addressed several communications to said water works company requesting to know by what authority and by what right it claimed to own said water works and assumed to assert that the city of Vicksburg was bound to it by the terms of said contract. That the resolution which is appended to said bill, as Exhibit "I" was introduced in said board on the — day of September 1900, and was pending before said board until the 13th day of November 1900; that during all of said time

105 complainant refused to make any reply to the said communications. It pretended that it was impossible to make answer thereto it being declared to said board in open session its constituted representative as the reason for such failure that one of the directors was in Paris and another in St. Louis; although the muniments of its title, such as it was, were already in existence and were well known to complainant at that time.

These respondents deny that the water which had been furnished by said water works company since they acquired the ownership thereto has been "good wholesome water fit for all purposes of domestic or manufactoring consumption." On the other hand they aver that said water has for the most part been charged with mud, sediment and other deleterious matter injurious to the health of the people who use the same and unfit for domestic use.

They deny that said Vicksburg Water Works Company has kept and maintained a pressure upon its mains to the extent stipulated and required in the contract with Samuel R. Bullock & Company. That for the failure of said company to comply with said contract in respect of the quality of the water to be furnished and in respect of the pressure required to be maintained upon said mains these respondents say that complainant is not entitled to any relief by virtue of its terms; that these respondents are released from its obligations.

Respondents say that it is immaterial whether the said city has received for the past fourteen years, without complaint, water from the Vicksburg Water Supply Company of a like character with that furnished by the Vicksburg Water Works Co., but they deny that the water which has been furnished by the Vicksburg Water Works Company is of as good quality as that provided by the old company. However that may be these respondents are charged with a trust to the people of the city of Vicksburg and if their predecessors have been false to their duties heretofore, and failed to discharge their obligations to the public it is no reason or excuse that the present board of mayor & aldermen should continue a dereliction of its duty.

106 It has been the history of the corporations which have acquired and seized upon the public utilities that they have

sought to evade as far as possible their liabilities and to incur the minimum of expense, in the exercise of the public privileges possessed by them and have notoriously sought to press to the furtherest limit their exaction from the public and their encroachment and monopoly of franchises, and the history of said complainant in dealing with the city of Vicksburg is not an exception to the general rule.

Respondents deny that they have arbitrarily, unjustly and illegally proceeded to adopt an ordinance and a resolution assuming to abrogate and take away the franchises and contract rights of the complainant as averred *iterum iterumque* in complainant's bill.

They deny that the resolution referred to was adopted in pursuance of any purpose or desire to become the owners of said works.

Your respondents admit that the averments in said bill that an act of the legislature was passed authorizing the city of Vicksburg to issue bonds for the purpose of constructing a city hall and a sewerage system, and also for the purpose of either purchasing or building a water-works system and authorized the issue of one hundred and fifty thousand dollars ($150,000) for the latter purpose, but respondents say the question of liability of the city to complainant by virtue of the contract entered into with Samuel R. Bullock & Co., which is raised by said resolution is altogether aside from the scheme and purpose of becoming the owners by purchase or otherwise of a system of water works, they say that said alleged contract with Samuel R. Bullock & Co., imposes upon the inhabitants of Vicksburg and its corporate authorities an onerous and extortionate burden, and that no such contract would now be made with the said Vicksburg Water Works Company or any other company at the rates prescribed in said ordinance, that they far exceed the average price charged for water in cities situated in like condition and circumstances to Vicksburg.

107 That the question of liability of said city to complainant does not depend upon said act of the legislature; that the resolution adopted by said board was not adopted in pursuance of said act; that whether the city is obligated under said alleged contract is a question which is not effected by or dependent on either the resolution of said board or said act of the legislature; that it is immaterial whether said act of the legislature had been passed or not or whether your respondents desired to become the owners of water works, it would still be and is the obligation on the part of these respondents in the discharge of their public duties, to deny that they are bound to said complainant by said contract, for they are informed and believe and now charge the fact to be for the many reasons herein set forth that no liability exists on the part of said city by reason of said contract.

Respondents further show that they have proceeded with this matter conservatively and justly towards the complainant; that it was after mature deliberation and upon the advice and opinion of two legal firms and upon the opinion of the city attorney that they were not bound by said contract, that the resolution in question was by them adopted.

That said resolution upon its face provided that reasonable compensation should be paid to the complainant for the use of water provided by hydrants for fire purposes.

Respondents admits that in pursuance of said act of the legislature and election was held to determine whether bonds should be issued for the purpose of building a city hall, of constructing a sewerage system and of buying or building a water works, but they deny that they have at any time or in any way by reason of said election or otherwise confederated or conspired with any one to injure or destroy the credit of the Vicksburg Water Works Company, or that they have assumed to abrogate or take away the franchise and contract rights of said company or have persistently and unlawfully endeavored to disable said company from carrying on its business and to destroy its credit and the value of its property and to coerce said company to sell its water works to the city for an inad-
108 equate price.

That the averments of said bill in this respect as contained in the thirteenth, fourteenth, and fifteenth, paragraphs, and particularly in the 13th paragraph if predicated of said resolution evince a rare capacity for distortion if such a resolution could be capable of such distortion. Said averments particularly in paragraph thirtee-th, these respondents, say are mere "words" dealing in vague and indefinate generalities that are but a crude adap-ion of certain judicial utterances, which were employed as legal conclusions and deductions from the proof of facts in a certain case. If said complainant means to charge these respondents with any other act of conspiracy or other-ise to injure the complainant or its property than the adoption of said resolution then these respondents once for all deny each and singular all of said imaginary acts.

They deny that they have done any act for the purpose of disabling the c-mplainant from carrying on its business or to compell it to sell its property at an arbitrary price or to cast a cloud upon its title.

Respondents admit that on the 7th day of November a resolution was adopted by them as averred in the 16th paragraph of said bill; but they submit that it is a gratuitous assumption on the part of complainant to designate it in the several parts of said bill as "a resolution and an ordinance." It is to be known by its terms and its import is to be gathered from its face and its character and purpose cannot be changed by any adroit appellation by which it may be designated.

Respondents say that the "wreck and ruin," which may be impending to said water works should "said act of the legislature and said resolution be permitted to stand" as averred in said bill is no legal ground to question the validity of either said act or resolution.

That the consequences which complainant must face flow from the measure of its legal rights; dependent upon the sole question as to whether any contract exists between said city and said complainant.

Respondents deny that said resolution was adopted by them, and

that the suit in the chancery court of Warren county for can-
109 cellation of said contract was instituted by them in pursuance of said act of the legislature and that they were done either to injure the property of complainany, or to coerce it to sell said works at an inadequate price; they say that said act authorizing the issuance of bonds to build water works provided also for the construction of a sewerage system, but upon the condition that said city should own its own system of water works which they were authorized either to purchase or erect at its own cost; that said act merely confers authority upon respondents which is optional with them but is not mandatory nor obligatory upon them to take such action; they say that said bill does not charge that said city intends to build any works or has taken any action for that purpose. In fact respondents say that the wisdom and policy of building any works cannot be considered and determined by them until it be first ascertained whether they are bound to complainant by said contract:

That before the question of building a sewerage system and water works can be entertained by them they deem that it is proper, that, there should first be settled their liability, if any, under said contract. They consider that it is their duty as public servants to test said question, not only, because of the onerous terms of said contract, but also because the public welfare requires that said question be settled for they might justly conclude that it would be unwise to build a system of water works in case it should be decided that they are bound by said contract though they may have the legal right to build.

That while they conssder it desirable to build a sewerage system and as a condition that they should own the water works, and that it is desirable that the plant of complainant should be purchased by said city at a reasonable and liberal price, yet they say that the very question of the liability of the city under said contract renders any negotiations with said complainant looking to such purchase impracticable; that they owe it as a public duty, to have the question of their liability determined before any further effort be made to purchase said works from said complainant. So that they say, that

said resolution was not adopted in pursuance of said act of
110 the legislature, or by virtue of it, but solely to test said question, as an official duty which they owe, first, that they should not acknowledge a burdensome liability upon the tax-payers which they do not believe to exist, and second, that they might act advisedly in determining what action, if any, should be taken by them in the exercise of the authority, to build or buy a water-works plant.

Respondents say that while the averment in said bill, that the amount of bonds authorized to be issued for water works, to wit, the sum of one hundred and fifty thousand dollars ($150,000), is an inadequate sum for the price of complainant's plant is immaterial, yet they deny that is and inadequate price and they aver and charge the fact to be that said plant is not worth more than one hundred thousand dollars ($100,000,) if that: that a new plant in many respects superior to the present one, they are informed can be built for

one hundred and twenty-five thousand dollars ($125,000): that the old plant has been in operation for fifteen years or about one-third of the average life of such plants, while all the boilers, engines and pumps belonging to it are nearly worn out, and are of little value; they deny again that they have done any act for the purpose of depreciating the value of said property or to coerce it to sell its property at an inadequate price.

Respondents say that while they have denied their liability under said contract yet they have offered complainant a reasonable and just compensation for the use of hydrants: but that which is reasonable and just to common mortals seem- not to be palatable to the greed of a monopoly.

They say that the average gross income of said works now exceeds thirty thousand dollars ($30,000) per annum and its net income is more than twelve thousand dollars ($12,000) of which the payment by the city under said contract amount- to about eight thousand dollars ($8,000).

That the proposition of the city to pay said complainant pending the litigation to test its liability fifty dollars ($50) for each hydrant, would amount to six thousand dollars ($6,000) there being 122 hydrants and so they emphatically deny that any act done by
111 them or proposed to be done by them would "disable complainant from carrying on its business," or "work wreck and ruin" upon its property, aside from the naturaly consequences which might follow, if it be found that said city is not bound by contract with complainant.

Respondents admit that they addressed a communication at the instance of the advisory board asking the complainant if their water-works plant could be purchased. The reply of the said complainant to said inquiry is characteristic, a copy of which is herewith marked Exhibit "—."

Respondents further answering say that they are not advised how nor when the office-holders and seekers form the mayor down dragged the water works into politics: that all the matters stated in the 19th paragraph of said bill in this respect are wholly immaterial, irrelevant and insufficient.

That these respondents deny that anything was ever stated in this regard by said mayor or other office-holder by the authority of these respondents or in pursuance of any act of theirs: and as representatives of said municipal corporation. They are not responsible nor or they to be held by any declaration of individuals whether they be office-holders or office-seekers: that there were no statements or publications made dur'.ng said canvass which were false, and though it is immaterial and irrelevant matter, these respondents nevertheless state the fact to be that while a majority of the said board of mayor & aldermen were in favor of adopting the resolutions which was passed in November that nevertheless there were certain members of said board who opposed the adoption of said resolution in the interest of the said complainant, and not in the interest of the public.

That the averments in said bill to the effect that publications and

declarations were made by candidates for office that if elected they would bring suit to cancel said contract is an absurd charge upon its face for it was long before said election was held that the then board of mayor & aldermen adopted said resolution whereby they deny their liability under said contract, and that it was in pursuance of that resolution that a suit was instituted to cancel said contract.

112 Your respondents say that while the matters averred in the 20th and 21st paragraphs of said bill are wholly irrelevant and immaterial nevertheless they are informed and believe and charge the fact to be that one M. O. Crumpler who was the agent and promoter of The Water Works Company, complainant, was advised in the city of Vicksburg by the then superintendent of the Vicksburg Water Supply Company of the purpose to authorize the city to buy said works; that he was informed of the details of said proposed litigation.

Respondents deny the vague and indefinate charges that inflam-atory and untruthful articles were written against said water works company & that rumors of damaging effect which were utterly false were circulated by them; though sheltered in indefinate terms and although irrelevant and immaterial they deny that they were written, circulated or were put afloat by these respondents, or their officers or agents or in pursuance of any conspiracy against said company.

These respondents say that the averments in the 22nd paragraph while they are immaterial and irrelevant are wholly untrue and they deny that any member of said advisory board ever made any proposition to buy said water works for himself or his associates.

They admit that Mr. E. C. Carroll a gentleman of probity and of honor was requested by a foreign corporation to open negotiations for the purchase of said works, that he, the said Carroll had no interest whatever in said negotiations.

Your respondents say, of this matter, that they never heard of it until after complainant had filed his bill.

They say it is true that a suit was instituted in the chancery court of Warren county, Mississippi against the complainant by the city of Vicksburg to have said contract declared void and it is true that it was done at the instigation of said board of mayor and aldermen because it goes without saying that the acts which one may do are instigated by himself, but it is not true that said suit was instituted in confederation with said leading citizen- as insinuated in said parragaph.

113 Your respondents say to the 25th and 26th paragraphs of said bill that the matters averred and contained are irrelevant, immaterial and multifarious and constitute no ground of relief and the legal sufficiency thereof is now submitted to the court as if specially demurred to.

Your respondents admit for the use of fire-hydrants a price was stipulated to be paid by the mayor and aldermen to the said Samuel R. Bullock & Co. They deny however that the amount which is due under said ordinance was due to the complainant, and they

deny that these respondents offered to pay to the said complainant an inadequate amount or price for the use of said hydrants.

They deny that their proposition to pay a reasonable compensation to the said complainant was "a scheme by which they confederated, conspired and endeavored to coerce and force complainant into an act whereby the ordinance would be annulled." It is an absurd legal proposition that the offer by the city to pay the complainant $50.00 a year for a hydrant pending the litigation as to whether there was any contract would amount to any waiver of the rights of their property and it was perfectly competent for the said complainant to have accepted such payment on account.

These respondents show the facts to be that during the month of January, 1901, the mayor & aldermen by resolution referred water-works bills to a committee, that said committee sought to have and agreement with the management of said water works company as to what should be paid by way of a reasonable compensation pending said litigation; that said company refused absolutely to take anything less than the amount which was stipulated in said contract although they proposed to give bond to cover whatever excess the courts might find in such payments; that at the last meeting of said committee the superintendent of said company and its attorney were present and as they had refused to make any other concession the report of said committee which is set forth in said bill was adopted.

That at that time they did not object to the form of said report and that their rights would be concluded by the acceptance of the $50 which respondents show is the prevailing rate at Shreve-
114 port, Natchez, and Meridian.

They admit that said report was adopted by the board of mayor and aldermen and that there was a reservation that said payments should not effect the rights of said city, and it necessarily and legally followed that the rights of the complainant would not also be thereby impaired. However this may be, on the next succeeding day to *iwt* on Feb'y 13th 1901 there appeared in one of the papers of the city of Vicksburg the following paragraph:

"There appeared an article in our paper yesterday to the effect that it was reported that Mr. Crumpler stated that he would cut off public hydrants, after reasonable notice was given to the city and underwriters if the city did not pay the company's bill for the six months due on the 1st of January. Mr. Crumpler authorizes us to say that what he stated was substantially as follows: 'The city's proposition to pay the company was only a partial payment and that it was so worded and hedged about that if accepted by the company it would make the company commit an act that would be a false position with reference to the contract with the city and might be construed the breaking of the contract, and for those reasons the company could not accept under the conditions offered by the city and that *that* if the city continued to refuse to pay except under those conditions it would soon put the company in a position that it could not furnish water any longer for fire protection, and that it did not want to do this, but would be forced to do so.'"

That at once and before the filing of this bill and some days before the fiat was obtained for the injunction which was issued in this suit to wit on Feb'y 14th, 1901, the mayor of the city of Vicksburg seeing said paragraph and being advised for the first time that the said complainant objected to said resolution on that ground addressed and delivered to Mr. M. O. Crumpler the following letter:

Mr. M. O. Crumpler, supt. of the Vicksburg Water Works Co.

DEAR SIR: I notice in the Evening Post what purports to be a statement from you to the effect, that the offer of the city to pay you $50.00 each for the use of fire-hydrants, was made upon such condition as you could not accpet. It is my understanding and I
115 am so advised also by the city attorney, that it was not the intention of the mayor & aldermen to impose any condition by which your rights, in the controversy with the city, should be in any way affected. I am therefore prepared to take your receipt for said payments stipulating that your rights in the premises shall not be impaired or waived by accepting payment as aforesaid.

Very respect'fy,
(Signed) W. L. TROWBRIDGE, *Mayor.*

That this communication was made in a spirit of fairness to the said complainant, that they might be amply compensated pending said suit for the use of their fire-hydrants.

The complainant has charged these respondents with "endeavoring to disable it from carrying on its business, with destroying its credit and the value of its property, with coercing it to sell its water works to it for an inadequate price and of otherwise carrying on an unlawful conspiracy and doing other illegal and unlawful acts in furtherance of said conspiracy," but has not specified a single act on the part of the city evincing such purpose, and while said charges are vague and indefinate and do not call for an answer in the manner and form in which they are pleaded, nevertheless these respondents say, as to such charges, that they deny, that they have done or authorized to be done by any one, any act evincing any such purpose or desire. That the city of Vicksburg is responsible in its corporate capacity as a municipality of the acts of its officers done by them under the guise and color of authority but not otherwise.

Respondents further answering say that the matters and things contained in complainant's amended and supplemental bill are irrelevant and immaterial and afford no ground of relief to the complainant and their legal sufficiency is now submitted to the court and judgment thereof is craved as if formally demurred to, and respondents further answering say:—That there does not appear any ground for the equitable relief sought by the complainant by reason of the matters and things averred in its original and amended bills:—

116 And now having fully answered defendants pray to be dismissed hence with their reasonable costs and with damages for the wrongful suing out of said injunction, a bill of particulars whereof is herewith filed.

STATE OF MISSISSIPPI,
County of Warren, City of Vicksburg.

Western Division of the Southern District of Mississippi.

Personally appeared before the undersigned a United States commissioner in and for said western division of the southern district of Mississippi, W. L. Trowbridge, mayor of the city of Vicksburg, who being by me duly sworn on oath states on behalf of the defendant, that the matters and things stated in the foregoing answer as of his own knowledge are true and correct, as therein stated and such as are stated on information and belief he verily believed to be true and that the matters affirmative alleged and pleaded are true in fact, and that this answer is not interposed for the purpose of delay.

(Signed) W. L. TROWBRIDGE,
Mayor of the City of Vicksburg, Miss.

Sworn to and subscribed before me this the 21st day of June 1901.

JOSEPH H. SHORT,
[SEAL.] *United States Commissioner.*

We hereby certify that in our opinion the demurrers and pleas set forth in the foregoing answer are well founded in point of law and that same are not interposed for delay.

——— ———,
Sol's for Defendants.

117 No. 41. Vicksburg Water Works Company *vs.* The Mayor & Aldermen of the City of Vicksburg. Answer. Filed June 21st, 1901. L. B. Moseley, clerk. C. D. Banks, D. C. Voller, Magruderm Bryson & Dabney, sol's for def't.

118 In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Damages.

To the Vicksburg Water Works Company:

You will take notice that in case said court shall sustain the motion to dissolve the injunction in this case the defendants will claim damages for the wrongful suing out of said injunction as follows:—

1st. To attorneys' fees $3,500.

2nd. To amount paid complainants in pursuance of saidn injunction $2,850.00.

3rd. To damage for unlawful interference with the duties of said defendants on promoting and conserving the health and comfort of

the inhabitants of said city, $2,500, and for such other and general damages as defendants may unlawfully claim.

W. J. VOLLER, *City Attorney.*
MAGRUDER, BRYSON & DABNEY,
Sol's for Defendant.

119 & 120 No. 41. Vicksburg Water Works Company *vs.* The Mayor & Aldermen of the City of Vicksburg. Particulars of damages. Filed June 21st, 1901. L. B. Moseley, clerk. C. D. Banks, D. C.

121 In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR & ALDERMEN OF THE CITY OF Vicksburg, Defendant. } July Term, A. D. 1901.

To W. J. Voller, Esq., Messrs. Magruder, Bryson & Dabney, defendant's solicitors:

You will please take notice that The Vicksburg Water Works Company complainant herein will, on July 1st, 1901, being the first day of the next July term to be holden in Vicksburg, Mississippi, at the opening of said court or as soon thereafter as counsel can be heard, make application for an order to take from the files the paper purporting to be an answer, demurrers and pleas filed by said defendant on the 21st day of June, 1901, and for such other and further order as to the court shall seem just. (A copy of complainant's motion therefor being hereto attached.)

Dated at Vicksburg, Mississippi, this the 29th day of June, 1-01.

S. S. HUDSON &
A. N. EDWARDS,
Sol's for Complainant.

122 In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSburg, Defendant. } July Term, A. D. 1901.

Now comes The Vicksburg Water Works Company the complainant herein, and moves this honorable court to take from the files the paper purporting to be an answer, demurrers and pleas, filed by The Mayor and Aldermen of the City of Vicksburg, the defendant, in said cause on the 21st day of June, 1901, and for such other and further order and relief as to the court shall seem just, and for the ground of said motion says:—

1st. That said defendant heretofore to wit: on the 30th day of April, 1901, filed a demurrer to the bill of complainant in this cause for want of jurisdiction and that the said demurrer is pending and undetermined.

2nd. That said defendant heretofore to wit: on the 30th day of April, 1901, filed a plea to the jurisdiction of this court in this cause and that the said plea to the jurisdiction is pending and undetermined.

3rd. That heretofore on the 30th day of April, 1901, the said defendant filed a plea in bar to said bill of complaint and that said plea in bar is pending and undetermined.

4th. That said answer was prematurely filed.

5th. That there is embodied in said answer a plea in abatement.

6th. That there is embodied in said answer a demurrer to the whole bill of complaint.

7th. That there is embodied in said answer a plea to the said bill of complaint, viz., that there is another suit pending in the chancery court of Warren county, Mississippi, for the same matter, set forth in said bill of complaint.

123 8th. That there are improperly joined in the said paper filed by the defendant as aforesaid, demurrers to the whole bill of complaint, pleas in bar to said bill of complaint, a plea in abatement to the said bill of complaint for want of jurisdiction in this court; and the answer to said bill.

S. S. HUDSON &
A. N. EDWARDS,
Sol's for Complainant.

This cause come on to be heard on the foregoing motion, and the same being considered by the court, it is therefore ordered and adjudged and decreed that the same be overruled.

124 No. 41. Overruled. Filed June 29th, 1901. L. B. Moseley, clerk.

125 In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY of Vicksburg, Defendant.
} July Term, A. D. 1901.

And now comes The Vicksburg Water Works Company, the complainant herein by S. S. Hudson, and A. N. Edwards its solicitors and moves this honorable court for a temporary injunction issuing out of this honorable court under the seal thereof directed to the defendant, its officers, attorneys and servants and each of them enjoining and restraining them from assuming to abrogate and take away the franchises and contract rights of said complainant, and from

endeavoring to disable said complainant from carrying on its business and to coerce said complainant to sell its water works to defendant for an inadequate and arbitrary price and from otherwise carrying on the unlawful conspiracy set out in complainant's bill on file in this cause, and from perpetuating any minutes or ordinances or resolutions of said defendant whereby it denies liability or seeks to annul or refuses to pay complainant the contract price for water and that said defendant be compelled to pay to complainant for water used by said defendant as per the ordinca-ce price set forth in said bill of complaint, and to continue to do so until this cause is heard upon its merits, that the rights of all parties may be preserved and for such other and further order and relief as to the court seems just.

S. S. HUDSON &
A. N. EDWARDS,
Sol's for Complainant.

126 Number 41. The Vicksburg Water Works Company *vs.* The Mayor and Aldermen of Vicksburg. Motion for temporary injunction. Filed June 29th, 1901. L. B. Moseley, clerk. C. D. Banks, D. C.

127 In the United States Court for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

The defendants move for leave to file the answer herein, marked filed heretofore by the clerk as of June 21st, and for leave to withdraw the separate demurrers and pleas heretofore filed on April, 30th, *said* as the answer embodies all the matters of defense, which are set forth in said pleas and demurrers.

W. J. VOLLER,
MAGRUDER, BRYSON & DABNEY.

128 No. 41. Motion. Ent. Order Book No. 1 page 11. Filed July 1st, 1901. L. B. Moseley, clerk. C. D. Banks, D. C.

129 In the Circuit Court for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Coming on to be heard the motion to dissolve the injunction herein, and the defendants now having moved the court for leave to file the answer, herewith presented and marked by the clerk as filed June 21st 1901, and to withdraw the pleas and demurrers filed April 30th 1901. It is ordered that leave be granted to file said answer

and withdraw said pleas and demurrers, but that the question of the jurisdiction of this court to hear the matter in controversy, raised by said answer, shall be first presented and argued.

This 1st day of July, 1901.

H. C. NILES, *Judge.*

130 Vicksburg Water Works Company *vs.* Mayor & Aldermen of the City of Vicksburg. Filed July 3rd, 1901. L. B. Moseley, clerk. C. D. Banks, D. C.

131 VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF VICKSBURG.

Now comes the complainant and moves this court to require defendant to elect on which plea it will stand whether on demurrer to whole bill or on the answer.

S. S. HUDSON &
A. N. EDWARDS,
For Motion.

Overruled; excepted.

132 No. 41. Vicksburg Water Works Company *vs.* Mayor and Aldermen of the City of Vicksburg. Filed July 1st, 1901. L. B. Moseley, clerk. C. D. Banks, D. C.

133 In the Circuit Court of the United States in and for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

This cause coming on to be heard upon the motion to dissolve the injunction heretofore issued in this cause and the court now being advised in the premises and it appearing that there is no Federal question involved in the controversy presented by the pleading it is therefore ordered, adjudged and decreed that said injunction be and the same is hereby dissolved and that the bill of the complainant be and the same is hereby dismissed, and that execution issue therefor for the cost in the case.

H. C. NILES, *Judge.*

134 Filed July 3rd, 1901. L. B. Moseley, clerk. C. D. Banks, D. C.

135 In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

And now comes the defendants and propound their claim for damages for the wrongful suing out of the injunction herein which

has been this day dissolved and move the court to hear and determine the same in accordance with the notice and bill of particulars of the same heretofore filed and served upon complainant.

VOLLER,
MAGRUDER, BRYSON & DABNEY.

136 No. 41 Vicksburg Water Works Company *vs.* The Mayor & Aldermen of Vicksburg. Motion. Filed July 3rd, 1901. L. B. Moseley, clerk. C. D. Banks, D. C.

137 In the Circuit Court of the United States in and for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG, Defendant.

Now comes the complainant in the above-styled cause and moves the court to continue the restraining order in force as granted until the appeal in this cause is heard by the Supreme Court of the United States or until the further order is granted by said court.

S. S. HUDSON,
A. N. EDWARDS,
For Motion.

138 No. 41 Vicksburg Water Works Company *vs.* The Mayor and Aldermen of Vicksburg, Miss. Motion to continue restraining order. Filed July 3rd, 1901. L. B. Moseley, clerk. C. D. Banks D. C. Ent. O.

139 United States Court for the Western Division of the Southern District of Mississippi.

Upon the appeal being allowed herein it is ordered that the temporary restraining order herein be continued until the first day of January 1902 or if before then, until the decision of the appeal herein by the supreme court upon condition however that the complainant diligently prosecute its appeal and file a motion at or before the next term of the supreme court to advance the appeal in this cause upon the docket of the Supreme Court of the United States, and upon the further condition that the injunction bond heretofore given in this case, shall stand and continue in force for any additional liability, which may be incurred by reason of this order, the principal and sureties upon said bond, now in open court consenting hereto.

Ordered, adjudged and decreed, this the 3rd July, 1901, in open court.

H. C. NILES, *Judge.*

140 Filed July 3rd. 1901. L. B. Moseley, clerk. C. D. Banks, D. C. Ent. Minute Book, No. I., page 581. L. B. Moseley, clerk.

141 In the Circuit Court of the United States in and for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

The above-named plaintiff The Vicksburg Water Works Company conceiving itself aggrieved by the order entered on the 3rd day of July, 1901, in the above-entitled proceedings, doth hereby appeal from said order to the Supreme Court of the United States and it prays that this its appeal may be allowed, and that the transcript of the record and proceedings and papers upon which said order was made duly authenticated may be sent to the Supreme Court of the United States.

S. S. HUDSON &
A. N. EDWARDS,
Att'ys for Plaintiff.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

And now to wit on the 3rd day of July, 1901, it is ordered, that the appeal be allowed as prayed for.

H. C. NILES,
Circuit Judge.

142 Vicksburg Water Works Co. *vs.* Mayor & Aldermen of Vicksburg, Miss. Filed July 3rd. 1901. L. B. Moseley, clerk. C. D. Banks, D. C.

143 In the Circuit Court of the United States in and for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG, Defendant.

The final decree having been entered herein on the 3rd day of July, 1901, dismissing this suit and the bill and amended and supplemental bill therein:

Now therefore this court in pursuance of the second paragraph of the fifth section of the act of Congress, approved March 3rd. 1891, and entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes"; hereby certifies to the Supreme Court of the United States, for decision, the question of the jurisdiction alone of this court over this cause, whether this cause presents a controversy which involves a Federal question under the laws or Constitution of the United States.

The only question which I considered and decided in dismissing

this suit and the bills of complainant is whether a Federal question was involved upon the pleadings.

H. C. NILES, *Judge.*

Filed July 4th. 1901. L. B. Moseley, clerk. C. D. Banks, D. C.

[Endorsed:] No. 18. Ent. M. B. No. 1 page 580. L. B. Mosley, clerk.

144 In the Circuit Court of the United States in and for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Supersedeas Bond.

Know all men by these presents that we, The Vicksburg Water Works Company and M. O. Crumpler and S. S. Hudson all of the city of Vicksburg, county of Warren, and State of Mississippi, are held and firmly bound unto the above-named Mayor & Aldermen of the City of Vicksburg in the sum of $250.00, to be paid by the said Vicksburg Water Works Company for the payment of which, well and truly to be made, we bind ourselves, and each of us, ourselves and each of our heirs, executors and administrators, jointly and severally, firmly, by these presents.

Sealed with our seals and dated the 4th day of July, 1901.

Whereas the above-named Vicksburg Water Works Company has prosecuted and appealed to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the western division of the southern district of Mississippi.

Now therefore the condition of this obligation is such that if the above-named Vicksburg Water Works Company *is* prosecuted said appeal to effect and answer all costs, if it fail to make said appeal good then this obligation shall be void otherwise the same shall be and remain in full force and virtue.

VICKSBURG WATER WORKS CO.,
By M. O. CRUMPLER, *Sec. & Treas.*
M. O. CRUMPLER.
S. S. HUDSON.

145 Sealed and delivered and taken and acknowledged this the 3rd day of July, 1901, before me,

H. C. NILES,
Circuit Judge.

Approved by,

——— ———.

146 Filed July 3rd, 1901. L. B. Moseley, clerk. C. D. Banks, D. C.

147 In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG, Defendant.

Assignment of Errors.

Afterwards to wit, on the 3rd day of July, in the year of our Lord 1901, at the July term for 1901, of the circuit court of the United States for the western division of the southern district of Mississippi, at Vicksburg, Mississippi, comes the said Vicksburg Water Works Company, by S. S. Hudson, and Albert N. Edwards, its solicitors and says, that in the record of proceedings in the above-entitled matter, there is manifest error in this to wit:—

I.

The court erred in dismissing the suit and bills of complainant for want of jurisdiction. The allegations of the bills raised questions of the power of the State of Mississippi, and of the city of Vicksburg, to impair the obligation of the contract of said complainant with said city, under the act of the legislature of Mississippi, approved the 18th day of March 1886; and the ordinance of the city council adopted November 18th 1866, and accepted by Samuel R. Bullock and Company for themselves associates, and assigns.

First. By the enactment of the act of the legislature of the State of Mississippi, approved March 9th 1901.

Second. By the resolutions passed by the city council of the said city calling an election upon the question (amongst others) of issuing bonds to purchase or construct water works and the election of July 3rd 1900 and the vote thereunder, whereby said proposition was carried.

Third. By the resolutions adopted by the city council of said city on November 7th 1900, undertaking to annul the said con-
148 tract and change the hydrant rentals from sixty-five ($65) dollars to "a reasonable compensation."

Fourth. By the report of the water committee of said city of February 7, 1901, and the adoption thereof, by said city council authorizing the payment of the contract price for hydrants, from August 15th 1900, to November 7th 1900, and of fifty ($50) dollars per hydrant from and after the passage of the resolutions of November 7th 1900.

Wherefore the said Vicksburg Water Works Company prays that the order of the said circuit court of the United States for the western division of the southern district of Mississippi, be reversed, and the said circuit court of the United States for the western division of the southern district of Mississippi, be ordered to proceed to hear and determine the above-entitled cause.

S. S. HUDSON &
A. N. EDWARDS,
Sol's for Complainant.

149 Vicksburg Water Works Company *vs.* The Mayor and Aldermen of Vicksburg Assignment of errors. L. B. Mosely, clerk. C. D. Banks, D. C.

150 And thereupon it is ordered by the court here that the transcript of the record and proceedings in the case aforesaid together with all things thereunto relating, be transcmitted to the Supreme Court of the United States and the same is here transmitted accordingly.

[Seal U. S. Circuit Court, Southern District of Mississippi.]

Test:

L. B. MOSELEY, *Clerk.*
C. D. BANKS, *D. C.*

Endorsed on cover: File No. 18245 S. Mississippi C. C. U. S. Term No. 392. The Vicksburg Water Works Company, appellant, *vs.* The Mayor and Aldermen of the City of Vicksburg. Filed August 10, 1901.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1901.

VICKSBURG WATER WORKS COMPANY,
Appellant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG,
Appellees.
No. 392.

STATEMENT OF THE CASE.

This appeal is taken by the Vicksburg Water Works Company from a decree dismissing its bill in equity, against the appellee for want of jurisdiction. This bill seeks relief against an act of the Legislature of Mississippi, certain resolutions and proceedings of the City Council of Vicksburg, Mississippi, and an election held in pursuance of said act of the Legislature. All of which are in said bill alleged to impair the obligations of a contract between the City of Vicksburg and the said water works company, and to cast a cloud upon the title of the latter.

In 1886, the City of Vicksburg, organized under its charter granted to it in 1884, secured the passage of an act by the Legislature of Mississippi authorizing said city "To provide for the erection and maintenance of a system of water works to supply said city with water, and to that end to contract with a party or parties, who shall build and operate water works." (See Section 5, page 695, of the Acts of 1886, approved March 18th, 1886.)

On the 18th day of November, 1886, said city passed an ordinance contracting with Samuel R. Bullock & Company, their associates, successors and assigns. Parts of said contract which are involved in this controversy are as follows:

"An ordinance to provide for a supply of water to the City of Vicksburg, in Warren County, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates, successors and assigns, for a supply of water for public use, and giving the City of Vicksburg an option to purchase the said works."

Be it ordained by the Mayor and Aldermen of the City of Vicksburg:

SECTION I. "That in consideration of the public benefit to be derived therefrom, the exclusive right and privilege is hereby granted for a period of thirty (30) years, from the time that this ordinance takes effect, to Samuel R. Bullock & Company, their associates, successors and assigns, of erecting, maintaining and operating a system of water works in accordance with the terms and provisions of this ordinance, and of using the streets, alleys, public squares and all other public places within the cor-

porate limits of the City of Vicksburg, Mississippi, as they now exist or may hereafter be extended, and within such other territory as may now or hereafter be under its jurisdiction, for the purpose of laying pipes, mains and other conduits, and erecting hydrants and other apparatus, for conducting and furnishing an adequate supply of good, wholesome water, to the City of Vicksburg, Mississippi, and to its inhabitants for public and private use, and for making repairs and extensions to the said system from time to time during the period in which this ordinance shall be in force."

SECTION III. "In consideration of the public benefit and the protection to property, resulting from the construction of said system of water works, the Mayor and Aldermen of the City of Vicksburg hereby rents of the said Samuel R. Bullock & Company, their associates, successors and assigns, not less than eighty (80) double nozzle, frost proof, fire hydrants, for the aforesaid period of thirty (30) years, at the annual rate of sixty-five ($65.00) dollars for each hydrant, to be payable semi-annually on the 15th days of January and July."

"After the first year of the operation of said water works, the said city hereby rents not less than ten (10) hydrants, in addition to said eighty (80), for the unexpired period of said thirty years; the first one hundred (100) hydrants shall be located on the original twelve (12) miles of mains, at said annual rental of sixty-five ($65.00) dollars, payable as aforesaid, and for the remainder of said period of thirty years, unexpired at the time of placing each of said hydrants."

"The rental of all hydrants in excess of one hundred (100) hydrants hereafter erected, on the line of distributing mains, or on the extensions thereof, as hereinafter provided, at the request of the said Mayor and Aldermen of the City of Vicksburg, shall be at the annual rate of fifty dollars ($50.00), for each hydrant, payable as aforesaid, during the unexpired period of the said original term of thirty (30) years."

"Water shall be used from said hydrants for the extinguishment of fires, and necessary fire practice, and for flushing sewers, and gutters, only provided that for fire practice and flushing sewers no more than two hydrants shall be opened at one time, and not more than once in each week."

SECTION IV. "Water shall be furnished free of charge, to the public schools, and all other public buildings, used exclusively for city purposes, and for filling public cisterns, and the city hospital shall also be supplied with water free, by a supply pipe, whenever the mains shall be laid within seven hundred and fifty (750) feet of said hospital, and water shall also be supplied free, for six (6) drinking fountains, with openings for man and beast, and one (1) public fountain, to be erected by the said Samuel R. Bullock & Company, in such places on the line of mains, as the Board of Mayor and Aldermen of the City of Vicksburg may direct."

SECTION V. "The said Samuel R. Bullock & Company, their associates, successors or assigns, may procure the organization of a water works corporation under the laws of any State, and may assign to it all the rights and privileges acquired hereunder, provided that such assignment shall not invalidate

or affect the bonds required by Section seven (7) hereof. And no assignment hereof shall be valid unless such assignee shall, in writing to said board of mayor and aldermen, accept this ordinance, and become bound by its terms and obligations. And the said board of mayor and aldermen shall pass and enact such further and other ordinances and do and perform such other acts, including the re-passage of this ordinance, in favor of the said corporation as may be necessary to vest in the said corporation the rights and privileges hereby granted."

SECTION IX. "At the expiration of each period of ten (10) years after this ordinance takes effect the Mayor and Aldermen of the City of Vicksburg shall have the right and privilege to purchase the said system of water works, provided they notify the said Samuel R. Bullock & Company, their associates, successors and assigns of their intention so to do, at least one year before the expiration of the said period of ten (10) years."

"The value of the said system shall be ascertained as follows: The said Samuel R. Bullock & Company, their associates, successors or assigns, and the said Board of Mayor and Aldermen of the City of Vicksburg, shall severally appoint one person, the two appointees shall choose a third, and the three persons thus chosen, who shall be hydraulic engineers, shall constitute a board to determine the value of the said system of water works. None of the board shall be residents of the said Warren County. The said Mayor and Aldermen of the City of Vicksburg shall, within sixty days after the said board have rendered its decision, pay the amount awarded in cash. A failure to so pay the award, or

to give a notice of the intention to purchase as provided, shall operate as a waiver of the right to purchase until the expiration of the next succeeding period of ten (10) years."

SECTION XII. "Be it further ordained that as part of the consideration for the performance of the duties and obligations hereby imposed on said Bullock & Company, their associates, successors and assigns, the said water works and the property and business pertaining thereto, and employed in and about said system, shall be exempt from all municipal taxation during the first five years of their operation, and all of the property and business pertaining to and employed in and about said system of waterworks shall hereafter during each year of the balance of the period of this contract be assessed for taxation by said city at a valuation not to exceed the sum of fifty thousand dollars ($50,000)."

SECTION XIII. "The said Samuel R. Bullock & Company, their associates, successors or assigns, shall have the right to make all needful rules and regulations governing the consumption of water, the tapping of pipes and general operation of the works, and to make such rates and charges for the use of said water as they may determine, provided that said rates shall not exceed 50 cents for each 1,000 gallons of water."

This ordinance was passed by the board of Mayor and Aldermen of the City of Vicksburg, Mississippi, and accepted by Bullock & Company, and the works were completed and tested, and the same accepted by the city. Before the works were completed, and while Bullock & Company were the owners of the

contract, they, in 1887, assigned it to the Vicksburg Water Supply Company, and it in turn, as authorized by the laws of the State of Mississippi, executed a deed of trust, conveying all of its property, franchises, contracts, etc., to secure the payment of an issue of its two hundred and fifty thousand dollars ($250,000) bonds, and in default of payment of interest on said bonds, the trustee thereof sold the property, franchises, contracts, etc., on the 8th day of August, 1900, pursuant to the terms of the deed of trust, to appellant, the Vicksburg Water Works Company, a corporation of Mississippi. But appellant did not take possession of the plant until the 15th day of August, 1900.

On the 9th day of March, 1900, the Legislature of Mississippi passed an act, on behalf of the City of Vicksburg, Mississippi, providing for the purchase or construction of water works, and so much thereof as appertains to water works, is in words and figures as follows to-wit: "An act to authorize the Mayor and Aldermen of the City of Vicksburg to issue bonds to the amount of three hundred and seventy-five thousand dollars, to purchase or construct, equip and maintain a water works system, construct and establish a sewerage system, to purchase grounds for, erect and equip a city hall, construct the necessary building for a hospital medical college, and for other purposes."

SECTION I. "Be it enacted by the Legislature of the State of Mississippi, that the Mayor and Aldermen of the City of Vicksburg shall have, and they are hereby authorized and empowered to issue, negotiate and sell the bonds of the said city in any sum not to ex-

ceed three hundred and seventy-five thousand dollars par value, bearing interest not to exceed the sum of 5 per cent per annum, payable annually. Said bonds may be issued in such form and amount as said mayor and aldermen may prescribe, and shall be payable at the expiration of forty years from the date of the issuance thereof; provided, always, that the said mayor and aldermen may in their discretion reserve to the said city the right to call in and retire each year, after the expiration of ten years, not less than $5,000.00 of said bonds."

SECTION II. "The proceeds derived from the sale of said bonds shall be applied as follows:

"One hundred and fifty thousand dollars, or so much thereof as may be necessary, for the purchase of the present power plant and system of water works, now owned and operated by the Vicksburg Water Works Company, if the said mayor and aldermen deem such a purchase to be for the best interest of the said city, otherwise they are hereby authorized and empowered to use and apply the said amount, or so much thereof as may be necessary, for the construction, establishment and maintenance of a new and complete system of water works, to be owned, maintained and operated by the said City of Vicksburg.

"One hundred and fifty thousand dollars, or so much thereof as may be necessary, for the construction of a system of sewerage in said city, which said system, when constructed, shall be and thereafter continue the property of the said city. The mayor and aldermen are hereby authorized and empowered to adopt such plans and specifications for

the construction of said water works and sewerage system as to them may seem proper, and may enter into a contract for the construction, or purchase of the same, and make payment therefor in accordance with the provisions of this Act. But said bonds so provided for the construction of a sewerage system shall not be issued nor sold until said mayor and aldermen shall have first provided for the purchase or establishment of a system of water works, as above provided."

"The said mayor and aldermen of said city are hereby authorized and empowered to furnish and sell water to private persons and corporations, and to charge and receive such compensation and toll therefor as the said mayor and aldermen of the said city may, from time to time, fix and establish."

SECTION IV. "It shall be the duty of the Mayor and Aldermen of the City of Vicksburg to levy and collect an annual tax upon all the taxable property in said city, to be known as the 'Water Works and Sewerage Tax,' sufficient to meet the interest on the bonds issued by said city, and to provide also for a sinking fund to pay said bonds as they mature. And all profits derived from the sale of water and connection with sewers shall likewise be placed with said sinking fund for the payment of said bonds. The said tax shall be levied and collected as other taxes are levied and collected in said city, and no part of the same, nor any of the profits derived from the water works or sewerage system, shall ever be used for any other purpose than for the payment of the principal and interest of said bonds."

SECTION VI. "That the Mayor and Aldermen of the City of Vicksburg are hereby granted the right of eminent domain, in accordance with the provisions of law, for the purpose of acquiring any rights, easements, land or property in said city necessary or convenient for it in the establishment, maintenance and operation of the purposes aforesaid, and it may acquire, by purchase, donation or condemnation, suitable grounds for the said purposes, within the corporate limits of said city, as well as the right of way for laying water works mains, or pipes, and sewer pipes, to and from said work, and within the corporate limits of said city. And for the construction and equipment of said water works and sewerage system the said city may acquire, by purchase, donation or condemnation, any suitable grounds within or without said city, the right of way to and from said work, and also the right of way for laying water pipes within the corporate limits of said city, and from said water works to the said city."

SECTION VIII. "Before any bonds shall be issued under authority of this act the said mayor and aldermen shall give twenty (20) days' notice of any election to be held, in the manner provided by law for the election of municipal officers, by publication in some newspaper published and printed in said city, naming the day thereof, and the amount of bonds to be issued, and the purpose or purposes for which they are to be issued, and if a majority of the votes cast at said election be cast in favor of the issuance of said bonds, then the mayor and aldermen of said city shall be fully authorized and empowered to issue, negotiate and sell the same, as above provided."

In accordance with said Act of March 9th, 1900, the board of mayor and aldermen passed a resolution calling an election to be held on the question of bonding the city, as provided in said Act, which resolution is as follows: "Be it resolved, by virtue of the authority vested in the Mayor and Aldermen of the City of Vicksburg, by the Act of the Legislature of Mississippi entitled an Act to authorize the Mayor and Aldermen of the City of Vicksburg to issue bonds to the amount of three hundred and seventy-five thousand ($375,000) dollars, to purchase or construct, equip and maintain a water works system, construct and establish a sewerage system, to purchase grounds for, erect and equip a city hall, construct the necessary building for the hospital medical college, and for other purposes. Approved March 9th, 1900.

An election shall be held on the third (3) day of July, on which day the question shall be submitted to the registered and qualified voters of said city, whether the bonds of said city to the amount of three hundred and fifty thousand ($350,000) dollars to purchase or construct, equip and maintain a water works system, construct and establish a sewerage system, to purchase grounds for, erect and equip a city hall; shall be sold and issued for the above named purposes." (See page 47 of Record.)

In accordance with said Act and resolution, an election was held, and the majority of the electoral votes were cast in favor of issuing the bonds to buy or construct water works, but under said Act, resolution and election, the city cannot pay the worth of the property but are compelled to pay an unfair and fixed price made by themselves through the legisla-

ture, although a stipulation *fair* and *just* in all respects is contained in the ordinance of 1886 whereby the city may own its water works. We contend if the city is allowed to construct works of it own, it will be an illegal confiscation of the present works, either by taking it at less than its value, or in compelling appellant to sell in apprehension of the construction of works by the city. Necessarily such construction by the city would result in the total destruction of appellant's property. The operation of the alternative, either to "construct or buy," would be sufficiently effective to destroy the present plant and financially ruin its owners, if allowed to remain in force.

The mayor and aldermen are authorized under Article 28, of the Charter of Vicksburg, to pass ordinances, resolutions, orders, etc., which is as follows: "To pass all ordinances and make all lawful orders necessary to the proper execution of the powers conferred upon them by this Charter." The mayor and aldermen on the 7th day of November, 1900, passed the following resolution, to-wit: "Resolved, That the mayor be and is hereby instructed to notify the Vicksburg Water Works Company, that the mayor and aldermen deny any liability upon any contract for the use of water works hydrants. That from and after August 15th, 1900, they will pay reasonable compensation for the use of said hydrants. That the city attorney take such action as shall be necessary to determine the rights of the city in the premises." (See page 25 of Record.)

After this resolution, and, to-wit, on the 7th day of February, 1901, the water committee of said defendant made the following report, to-wit:

Report of the Committee of Water Works upon the matter of the accounts of the Vicksburg Water Works Company, referred to it.

To the Honorable Board of Mayor and Aldermen:

"GENTLEMEN: Your committee would respectively report, in reference to the above subject, that they have fully considered the question of the accounts presented by said company.

On the 1st day of October (meaning 7th day of November), 1900, the board of mayor and aldermen passed a resolution denying any liability to said company, by virtue of the contract entered into with Samuel R. Bullock and Company, but for the use of hydrants, they would pay a reasonable and just compensation. Our powers, therefore in the premises are limited to a report based upon our idea as to what is reasonable and just. We have deemed it unnecessary, that we should go into any exact estimate as to what is reasonable and just, and therefore have proposed to said company, that we will pay *them from the 15th day of August, up to the day of said resolution at the rate which had been before then paid, and since that time we will pay them at the rate of $50.00 per hydrant* (italics ours), which we consider a most liberal rate. It being *understood, however, that this arrangement should not be deemed conclusive as to what is reasonable and right to pay in the future and after the termination of the pending suit.* (Italics ours.) Neither should this payment be deemed in any way a waiver of the rights of the city in the premises.

(Signed) D. A. CAMPBELL,
T. A. CAUGHLIN,
W. O. SMITH,
Committee."

This report was received and adopted by the City Council on the same day, with these words added thereto, upon the minutes of the board: "That the accounts be allowed on the basis and conditions of the committee's report." (See page 9 of Record.)

Upon these facts, laws and resolutions, the appellee filed a bill of equity in the United States Circuit Court, stating among other things, that these acts, laws and resolutions impaired the obligation of the contract made by the defendant in 1886, and were a cloud upon complainant's title and rights, and asking a decree of the Court annulling these resolutions and laws, and a restraining order enjoining the city from changing the contract price; from constructing a water works plant in disregard of the contract and compelling it to carry out the same as it contracted to do, until further order of the Court. (See page 1 of Record.)

After the bill was filed, and summons served, the defendant filed on the 30th day of April, without leave of Court, three separate pleas (see pages 49, 51 and 52, of Record), one a plea in bar, one a demurrer, which is in substance, a plea in bar, the third a plea in abatement, which was to the jurisdiction of the Court. On filing these pleas defendant gave notice by motion to dissolve the restraining order of injunction granted in this case. One plea denying, and the other inviting and admitting jurisdiction (aside from the fact that none of them set up new matter, and were merely conclusions of law as well as being insufficiently pleaded, particularly as to that plea with reference to the pendency of the suit in the Chancery Court, which fails to give to the Court an ac-

count of the status of the same, as it then existed in the Chancery Court of Warren County.)

Noyles v. Willard, I. Woods, U. S. Circuit Court Report, page 187;

See Forsters Federal Practice, page 144 and the authorities there cited.

The bill of appellant however states that appellant never made any appearance to said suit, except to file a petition to remove the cause to the Federal Court on account of the Federal question involved.

On the 1st day of June, complainant filed a motion to strike these pleas from the file, because they were improperly pleaded. (See page 54 of the Record).

On the 21st day of June, 1901, the defendant without leave of Court, filed an answer including therein two pleas and a demurrer, as originally filed (page 55 of the Record). To which defendant moved to strike the same from the files (See page 70 of the Record), and then complainant moved the Court to require defendant to elect on which plea it would stand. (See page 70 of the Record.)

On the application of the defendant, the Court allowed it to withdraw the three pleas filed on the 30th day of April, also the pleas and answer filed on the 21st day of June, 1901, and permitted it to *refile* the answer, demurrers and pleas filed on the 21st of June, 1901, on the 1st of July, term time. (See page 72 of Record.)

Thereupon complainant moved to strike the answer, demurrer and pleas from the file (page 70 of Record), which was overruled, then complainant moved the Court to require the defendant to elect upon which plea it would stand (page 73 of Record),

which motion the Court overruled. Then the Court took up the matter of jurisdiction.

SPECIFICATION OF ERRORS.

Because the Court erred in dismissing the bill of complainant in this cause, for the want of jurisdiction, on the ground that the statements made by complainant in its bill, do not raise a Federal question.

First. The allegations of the bills raised questions of the power of the State of Mississippi, and of the City of Vicksburg, to impair the obligation of the contract of said complainant with said city, under the Act of the Legislature of Mississippi, approved the 18th day of March, 1886; and the ordinance of the city council adopted November 18th, 1886, and accepted by Samuel R. Bullock and Company for themselves, associates and assigns.

Second. By the enactment of the Act of the Legislature of the State of Mississippi, approved March 9th, 1900.

Third. By the resolution passed by the city council of the said city calling an election upon the question (amongst others) of issuing bonds to purchase or construct water works and the election of July 3rd, 1900, and the vote thereunder, whereby said proposition was carried.

Fourth. By the resolutions adopted by the city council of said city on November 17th, 1900, undertaking to annul the said contract and change the hydrant rentals from sixty-five ($65) dollars to "a reasonable compensation."

Fifth. By the report of the water committee of said city of February 7th, 1901, and the adoption

thereof by resolution, by said city council authorizing the payment of the contract price for hydrants, from August 15th, 1900, to November 7th, 1900, and of fifty ($50) dollars per hydrant from and after the passage of the resolution of November 7th, 1900.

FEDERAL QUESTION.

Independent of the extraneous matters irregularly filed in this cause, there is but one question involved in this appeal for the Court to determine. That question is: Do the bill and amended bill upon their faces raise a Federal question? Are the State Legislative Acts and the Municipal Acts, such laws as impair the obligation of a contract under Article I, Section 10 of the Constitution of the United States? Southern Pacific Railroad Company v. The People of California, 118 U. S. Reports, page 103, says: "The right of removal does not depend upon the *validity* of the claim set up under the Constitution or laws. It is enough if the claim involves a *real and substantial dispute or controversy.*" (Italics ours.) From this decision, it is clear, that whether the obligation of a contract has or has not been impaired is a Federal question, if the *pleading presents a substantial controversy.* And a case may be considered as arising under the laws of the Constitution of the United States, whenever its correct decision depends upon the *construction of either.*

If the above rules of construction be correct to determine a jurisdictional controversy, the Court should have retained the case, and it was especially an error on the part of the Court to try the question on the bill, demurrer and answer, without giving complainant an opportunity to sustain the allega-

tions of the bill by proof? Why should there be any inquiry into the facts of the case to enable the Court to hear the testimony of a controversy that was not ready for trial? To do this, would be to assume certain matters to be true or false that might be to the contrary. The final decree recited (page 73 of the Record), that this cause came on to be heard on motion to dissolve the injunction, etc., upon the *pleadings*, when, according to the certificate of the Court, it would not and did not consider any paper in the case until the question of jurisdiction was determined. Although under the said pleadings other issues were argued by the defendant, and the complainant felt it incumbent on itself to argue the matter, not only on the demurrer, but to argue also that the facts in the answer were untrue. It occurs to us that the proper practice to have determined the question would have been for the Court to require the defendant to elect on which plea it would stand, or to plead in the order that such pleadings should be filed, and considered by the Court. If the Court considered first the demurrer to its jurisdiction, which it should have done, then the final decree should have recited that the case came on for hearing on the demurrer to the jurisdiction of the Court, etc. Necessarily, if the Court was without jurisdiction, that of itself dissolved the injunction. To set down the cause for hearing upon a plea in abatement, a plea in bar and a full answer, and then for the Court to consider all of them at one time, and without an opportunity for replication of facts, violates the fundamental rules of procedure. After a careful research, we are at a loss to find any Federal practice, approving such pleadings and practice; in

fact the pleadings are directly in conflict with rule 39, of the Equity Practice of this Court; wherein it says, defendant may plead to part, demur to part and answer to the residue, *provided the pleas are not in abatement.* Must complainant reply or except to the answer for insufficiency, before, under the rules appellant could have notice that the answer is on file or in existence, for the reason that the plea in abatement is then pending? The decree shows clearly that the Court in determining the Federal question, reached its decision as much from the answer as from the demurrer. In fact the certificate of the Court (see page 75 of Record), says: "The only question which I considered, and decided in dismissing this suit, and the bills of complainant, is whether a Federal question was involved upon the *pleadings.*" (*Italics* ours.)

When appellant presented the citation of appeal for the judge to sign, a portion of which were the following words: "The only question which I considered and decided in dismissing this suit, and the bills of complainant is whether a Federal question was involved upon the *allegations of said bills of complainant.*"

The judge stated that those were not the facts upon which he decided, and remarked: "That upon the face of the allegations in the bills there is a Federal question involved in my opinion, but I decided upon the pleadings in the case, which were the bills and answer;" and thereupon had the citation amended by striking out the following words: "Allegations of said bills of complainant," and added the word: "*pleadings.*"

The record before the Court does not show these changes in the original citation, and should the Court desire it we would be pleased to have the Court have the clerk send the original citation up.

We contend the judge was clearly wrong in taking into consideration any part of defendant's answer, and should not have considered anything but the demurrer to the jurisdiction of the Court, as to whether or not there was a Federal question involved. And we further contend if the judge was of the opinion there was a Federal question raised upon the face of the allegations of the bills, he should have held the case and gone to proof as to the truth or falsity of the allegations. The defendant's demurrer, however, admits the truthfulness of the allegations, and hence the case should not have been dismissed.

These rulings must be damaging to complainant. The well-settled practice is, the Court must decide the question of jurisdiction from the *face of the bill* and amendment thereto and nothing else. The question is:

1st. *Does the statement made by the complainant present a Federal question, independent of what might be finally determined by the Court from the facts?*

2nd. *Has this contract been impaired by the statements made by the complainant's bills?*

As before stated, in 1886, the Legislature of Mississippi passed an act amending the Charter of Vicksburg, in this language: "To provide for the erection and maintenance of a system of water works, to supply said city with water, and to that end to contract with party or parties who shall build or operate water

works," see Section 5, page 695, of said Act, approved March 18th, 1886. After the passage and upon the authority of this Act, the defendant passed an ordinance in November, 1886, contracting with Samuel R. Bullock & Company, their associates, successors and assigns, by which water was to be supplied, for public use, for thirty (30) years, giving the city an option to purchase said water works at the expiration of each ten years, of the thirty years. (See page 14 of the Record, section 9.) The power to make this contract for the time stipulated, and upon the very act involved in this controversy, has already been adjudicated by the Supreme Court of Mississippi, in the case of John B. Reid *et al.* v. The Mayor and Aldermen of the City of Vicksburg, 78 Mississippi Reports, page —. That case was argued and discussed in part by counsel for the appellee here, Magruder, Bryson and Dabney, who seek now to annul this contract, and yet in the above case an eminent and just Court saw no merit in the contention. As already recited, the city had its charter amended by the Legislature in 1886 to enable it "to contract with party or parties to supply the city with water." The city, in 1886, had the right to obtain the authority from the Legislature to enable itself to build and maintain works of its own; it also at the same time had the right in 1886 to obtain the authority from the Legislature to enable it to contract with "party or parties," which latter authority it did exercise in preference to the other; with this optional power in itself, to build or contract with others, and having exercised that power, and preferred another, other than itself, it cannot now ask for a privilege in 1900, from the

Legislature, which it sold to another in 1886. By all legal and moral law the city is precluded from entering into competition with its own selection and obligation made in 1886. Therefore, the effect of the Act of 1900, in this respect defeats and annuls the Act of 1886, and all contracts made thereunder as between these parties, and thereby impairs the obligations of the contract under the Constitution and laws of the United States.

In addition to this, by Section 9 of the contract, it is expressly provided: "That at the expiration of each period of ten years of the contract, after this ordinance takes effect, the mayor and aldermen shall have the right to purchase the system of water works, provided they notify the said Samuel R. Bullock & Company, their associates, successors and assigns, at least one year before the expiration of the said period of ten years." The value of said system shall be ascertained as follows: "The said Samuel R. Bullock & Company, their associates, successors and assigns, and the board of Mayor and Aldermen of the City of Vicksburg, shall severally appoint one person, the two appointees shall choose a third person, and the three persons thus chosen, who shall be hydraulic engineers, shall constitute a board to determine the value of said system of water works." Evidently each party understanding the word "exclusive," in the contract, to at *least precludе the city* from constructing water works of its own during the thirty years, or to own or acquire water works of its own, except as herein provided, and evidently this is what brought about the reservation expressed in Section 9, of the contract, that the city might in this way own its own water works, if it desired to own one.

Judge Riner, of the United States Circuit Court, in a very able opinion, delivered in February 1901, in the suit of Grant v. The City of Denver *et al* (which is not yet published in the Federal Reporter) says:

"Is the existing contract with the Denver Water Company a bar to the scheme of issuing bonds for the purpose of enabling the city to construct a system of water works? This question must also, I think, be answered in the affirmative. Under the charter the city council has power to provide the city with water, and the question whether the city should supply itself with water, or contract with a private corporation to do so, was presented in 1890. The city elected not to establish its own works and entered into a contract with the Denver Water Company to supply the city and its inhabitants with water for the period of twenty (20) years, after the 10th day of April, 1890." "This contract was expressly limited to twenty years and did not grant the exclusive privilege to the Denver Water Company, hence the city did not exceed its powers conferred upon it by the charter when it made the contract. *Perhaps the city might grant* (italics ours) the same privilege to another company, but that question is not in the case. The question here is, what effect does this contract have upon the right of the *city, a party to the contract* (italics ours), to erect works of its own and enter into competition with the Denver Water Company, the other party to the contract, during the life of the contract. In other words, while it is true that there is no express stipulation in the contract that it will not do so as was the case in Walla Walla v. Walla Walla Water Company, *was it within the contemplation of the parties at the*

time the contract was made that the city should have the right (italics ours), notwithstanding its contract, to erect works of its own and enter into active competition with the water company, when only one-half of the time for which the contract was to run had expired? Did the minds of the parties to the contract ever meet and assent to such a proposition?"

"In the case of Rockfellow v. Merritt, Judge Sanbern said: "One of the most satisfactory tests to ascertain the true meaning of a contract is made by putting ourselves in the place of the contracting parties when it was made, and then considering in view of all facts and circumstances surrounding them at the time of its execution, what the parties intended by the terms of their agreement." When their intention, he adds, "is thus made clear, it must prevail in the interpretation of the instrument."

Judge Riner further said: "By the terms of the agreement, it was to run for twenty years, with a provision that the city may then purchase the property. The rates to be charged both to the city and to private consumers were fixed by the contract for the entire period of its life. Applying the test just mentioned, and putting ourselves in the place of the contracting parties, I think it must be held that it was understood and intended by the parties that the *city at least* would not construct works and enter into active competition with the water company during the life of the contract, but would carry out the contract in good faith for the full period."

Some language used by the Court in the Walla Walla case we think is especially applicable here. It says: "In establishing a system of water works the company would necessarily incur a large expense in

the construction of the power house and the laying of its pipes through the streets, and as the life of the contract was limited to twenty-five years it would naturally desire to protect itself from competition as far as possible and would have a right to expect that the city at least would not itself enter into such competition. It is not to be supposed that the company would enter upon a large undertaking in view of the possiblility that, *in one of the sudden changes of public opinion, to which all municipalities are more* or less subject (italics ours), the city might resolve to enter the field itself, a field in which it would have undoubtedly become the master and practically extinguished the rights it had already granted to the company. We think a disclaimer of this kind was within the fair intendment of the contract."

Notwithstanding the city was thus precluded from thus competing with complainant, by its contract, and the heavy expenditures, made by the complainant, upon the faith of freedom for thirty years, from the formidable competition of the city, against which no private enterprise could maintain itself, the Legislature of Mississippi, by its Act of March 9th, 1900, expressly authorizes the city to construct and operate its own water works, and the city, proceeding under the authority of this Act, has held an election and has been formally authorized to construct and operate its own water works and to issue bonds therefor. It is unnecessary to contend here that the word "exclusive," or any other part of the contract, would preclude the city from granting another franchise to a third party. The city is not attempting to grant another franchise, nor is any other third person offering to either supply the city or its inhab-

itants with water. This question is, therefore, not in this case, and requires no consideration upon this appeal of the case. It can be asserted in this case as in the Walla Walla case, that the plain intent of the franchise as shown, not only from the use of the word exclusive, but also from the context and from the condition of the contracting parties, was that the city should not compete with the complainant. In this case there is nothing in the constitution or laws of the State of Mississippi disabling the city from entering into an exclusive contract. In the Walla Walla case it was against the laws of that State to grant an exclusive franchise. But as before stated this question is not involved in this case and it is at least a fair intendment to say that the city itself would not compete with the appellant in supplying Vicksburg with water. It follows, therefore, that the act of the Legislature of Mississippi, which authorizes the City of Vicksburg to do this act contrary to the intendment of its then existing contract, impaired the obligation of the contract by purporting to make lawful that which, but for such law, must be conceded to be unlawful. The remedy by injunction being essentially preventative, it is manifest that *complainant is entitled to such relief;* notwithstanding that the *city has not done all it proposes to do.*

The Legislative Act of March 9th, 1900, is unjust and unfair, if in fact, not taking property without just compensation.

In this:

Sections One and Four of said Act of March 9th, 1900, or so much thereof as appertain to this case are as follows:

SECTION I. "Be it enacted by the Legislature of the State of Mississippi, that the Mayor and Aldermen of the City of Vicksburg shall have, and they are hereby authorized and empowered to issue, negotiate and sell the bonds of the said city in any sum not to exceed three hundred and seventy-five thousand dollars par value, bearing interest not to exceed the sum of 5 per cent per annum, payable annually. Said bonds may be issued in such form and amount as said mayor and aldermen may prescribe and shall be payable at the expiration of forty (40) years from the date of the issuance thereof; provided, always, that the said mayor and aldermen may in their discretion reserve to the said city the right to call in and retire each year, after the expiration of ten years, not less than $5,000.00 of said bonds."

SECTION IV. "It shall be the duty of the Mayor and Aldermen of the City of Vicksburg to levy and collect a tax upon all taxable property in said city, to be known as the 'Water Works and Sewerage Tax' sufficient to meet the interest on the bonds issued by said city, and to provide also for a sinking fund to pay said bonds as they mature. The profits derived from the sale of water in connection with sewers, shall be pl ced with said sinking fund for the payment of said bonds. The said tax shall be levied and collected as other taxes are levied and collected in said city, and no part of the same, nor any of the profits derived from the water works or sewerage system shall ever be used for any other purpose than for the payment of the principal and interest of said bonds."

Thus, it will be seen that the city is authorized and empowered to levy and collect taxes on all taxable

property in the city, to pay the interest on its water works bonds, and also to levy and collect a tax for a sinking fund to pay off the said water works bonds.

The appellant's water works is taxable property in the city, and it is now paying a large sum annually to the city for taxes assessed on its plant; therefore, if the city is allowed to build its own plant, there would not only be the direct competition of the city with appellant's plant for the trade and custom of the consumers of water, but also a cloud and a burden upon all taxable property in the city, while the city's plant itself would not be assessed for taxes that it might help defray the expenses of the city as a third or other party other than the city would be. No other or third party other than the city could build a plant and maintain itself. And, further, it is manifestly unjust and unfair to allow the city to place a tax on appellant's plant to *pay the interest* on defendant's water works bonds, and also to place a tax on appellant's plant to *finally pay off* the bonded indebtedness of the *said water works bonds*, together with allowing it to build and operate in direct competition with appellant's plant for the trade of water consumers, and especially so when appellant has interest on its own bonds to pay; and the bonds themselves mature, and will have to be paid at the expiration of the thirty (30) years, when the franchise given by the city expires, to-wit: 1916. How can appellant maintain itself under these conditions? Hence it would be, and is in substance and in fact, indirectly taking away appellant's property without just compensation, for it would be to the utter destruction of appellant's plant to permit the *direct competition* of

the city with the above named *advantages of taxction* in favor of the *city*. The city should, in all fairness, be compelled to comply with its contract with appellant; for there is no charge in either of the resolutions stating that appellant has not complied with its part of the contract. And it has done so. The Court said, in the Walla Walla case, on the point of the city's *building and operating in competition*, which is applicable here: "We think, however, that it sufficiently appears that if the city were allowed to erect and maintain competing water works the value of those of the plaintiff company would be materially impaired, if not practically destroyed. The city might fix such prices as it chose for its water, and might even furnish it free of charge to its citizens, and raising the funds for maintaining the work by a general tax. It would be under no obligation to conduct them for a profit, and the citizens would naturally take their water where they could procure it cheapest. The plaintiff, upon the other hand, must carry on its business at a profit or the investment becomes a total loss."

Section one of the ordinance contract of 1886, conveyed to Bullock & Company, their assigns, etc., the rights and easements of all streets, alleys, public squares and all other public places within the corporate limits of the City of Vicksburg, Mississippi, "for the purpose of laying pipes, mains, and other conduits, erecting hydrants and other apparatus for conducting water to the City of Vicksburg, Mississippi."

Section Six of the Legislative Act of March 9th, 1900, is as follows: "That the Mayor and Aldermen of the City of Vicksburg are *hereby granted* the right

of eminent domain in accordance with the provisions of law, for the purpose of acquiring any rights, easements, land or property in said city necessary or convenient for it in the establishment, maintenance and operation of the purposes aforesaid, and it may acquire by purchase, donation or condemnation, suitable grounds for the said purposes within the corporate limits of said city, as well as the right of way for laying water works mains or pipes, and sewer pipes, to and from said work, and within the corporate limits of said city. And for the construction and equipment of said water works and sewerage system, said city may acquire by purchase, donation or condemnation, any suitable grounds within or without said city, the right of way to and from said work, and also the right of way for laying water pipes, within the corporate limits of said city, and from said water works to the said city."

Thus it will be seen that this legislative act granted the right of eminent domain to the city and has thereby taken these rights and easements away from appellant, and *replaced* them in the city, thereby annuling and repealing the ordinance contract of 1886, if said legislative act of 1900 is allowed to remain in force. This legislative act impairs the contract of 1886 under the Constitution and laws of the United States, and is a cloud upon appellant's title and rights. And if it has not taken these rights and easements away by the words "*hereby granted*," it has authorized and empowered the city to acquire by purchase, donation or *condemnation* any rights, easements, land or property, suitable grounds for said purposes, as well as the right of way for laying water works mains, or pipes within or without the

corporate limits of said city. Thus it will be seen that the city has the right, under this act, to *condemn* any of the rights, easements, rights of way and grounds that appellant has for its own works. The city may *condemn* appellant's pumping station or the stand-pipe grounds and all rights of ways and easements on the streets, or so much thereof as would totally disable and destroy appellant's plant, or *condemn* the plant entirely and appropriate it to its own use. This is clearly a law impairing the obligation of a contract, in that it changes the conditions and terms in the ordinance contract made in 1886 with Bullock & Company, so that the city may take appellant's plant without waiting until the end of each ten years as is provided in said contract, and the only way in which the city agreed to acquire said property, rights and easements.

Returning from the discussion of the validity of the contract and its impairment by the Legislature of Mississippi, we have not only a substantial controversy involving the impairment of its obligation in this particular, but there are also positive overt acts committed in the only way by which the city can act, impairing the obligation of the contract. *Do these acts impair?* To determine this question, we find the definition of the word impair in the case of Edwards v. Kersey, 96 United States, page 793, to be: "To make worse," "to diminish in quantity," "value," "excellence," or "strength," or "to lessen in power," "to weaken," "to enfeeble," "to deteriorate."

Comparing defendant's acts with the definition, we consider:

First. The resolution of the 7th of November, 1900, by which the city refused to pay the contract price, and attempts to substitute a *reasonable* price for the use of the hydrants, after August, 1900, which is as follows:

"*Resolved:* That the mayor be and he is hereby instructed to notify the Vicksburg Water Works Company, that the mayor and aldermen deny any liability upon any contract for the use of water works hydrants. *That from and after August 15th, 1900, they will pay a reasonable compensation for the use of said hydrants.*" (Italics ours.)

Without any reserved power in the contract or ordinance or resolution or legislative act, to regulate the rates after they are once fixed by the defendant in the contract, any attempt on its part to reduce the rate or to change, lessen, alter, or modify the contract, is an act impairing the obligation of its contract, just as much so as if the defendant sought to change the duration of the contract from thirty years to a different number of years. In fact, the language of the resolution does also change the time as well as the price, and leaves the right to supply the city with water by the company, at the will of the city. Without a reservation of the right to regulate the time and rates, it cannot be done without changing the contract, and when attempted to be done, as in this case, it brings the case within the United States constitutional inhibition.

See Freeport Water Company v. Freeport, 180 U. S. p. 587;

Los Angeles Water Company v. the City of Los Angeles, 178 U. S. p. 558.

The persistency with which the city has sought to destroy this contract, since the contemplated purchase by the present company of the water works, is apparent and amazing when we read the report of the water committee fixing the hydrant rental at $50.00 and adopted by the defendant which is as follows:

Report of the Committee of Water Works upon the matter of the accounts of the Vicksburg Water Works Company referred to it.

To the Honorable Board of Mayor and Aldermen:

"GENTLEMEN: Your committee would respectfully report in reference to the above subject that they have fully considered the question of the accounts presented by said company. On the 1st day of October (meaning the 7th day of November), 1900, the board of mayor and aldermen passed a resolution denying any liability to said company by virtue of the contract entered into with Samuel R. Bullock & Company, but for the use of hydrants they would pay a reasonable and just compensation. Our powers, therefore, in the premises are limited to a report based upon our idea as to what is reasonable and just. We have deemed it unnecessary that we should go into any exact estimate of what is reasonable and just, and, therefore, have proposed to said company that we will pay them from and after the 15th day of August, up to the day of the passage of said resolution at the rate which had been before then paid, and since that time we will pay them at the rate of $50.00 per hydrant, which we consider a most liberal rate; it being understood, however, that this arrangement should not be deemed conclusive as to what is reasonable and right to pay in the fu-

ture, and after the termination of the pending suit, neither should these payments be deemed in any way a waiver of the rights of the city in the premises."

(Signed) "COMMITTEE."

Said report was adopted *by resolution* by the mayor and aldermen.

It is the great and comforting wisdom of this Court, delivered in its decision in the Walla Walla case, that we find so peculiarly adaptable to this ill-tempered and unconstitutional resolution, when the Court said: "It is not to be supposed that the company would enter upon this large undertaking in view of the possibility that, in one of the *sudden changes* of *public opinion* (italics ours), to which all municipalities are more or less subject, the city might resolve to enter the field," etc., unless there were some binding rights absolutely secured by the contract, for a certain time and price to insure at least a return of the investment. Without giving the company the right to be heard, the city, in its own closed closets, and closed councils, arbitrarily fixed the price for the use of hydrants, and considered $50.00 a most "liberal rate;" not that it is reasonable or unreasonable, but that it is "liberal." In the case of The Capital City Gas Company v. The City of Des Moines, 72 Federal 818, also Indianapolis Gas Company v. The City of Indianapolis, 82 Federal 245, and The Consolidated Water Company v. The City of Santiago, 84 Federal 369, where there was no question about the right to regulate the rates, still the authorities hold that a bill to restrain the enforcement of a city ordinance, fixing the rates to be charged by the water works on the ground that such

rates are so unreasonably low as to amount to the taking of the property of the water company, without just compenastion, presents a Federal question.

The resolution of February 7th, 1901, in conjunction with resolution of November 7th, 1900, reduces the rate from November 7th, 1900, from $65.00, the contract price, to $50.00, and seeks to maintain the lesser price until further changed by the city.

This resolution reduces the liability of the city from $65.00 for hydrants, the contract price to a *quantum valebat*, afterwards fixed by the city at $50.00 per hydrant, and further says: "*It being understood however, that this arrangement should not be deemed conclusive as to what is reasonable and right to pay in the future and after the termination of the pending suit.*" (Italics ours.) In other words if this complainant would unsuspectingly fall into this well-laid trap and accept the contract price up to November 7th, 1900, the date of the first resolution, and $50.00 thereafter, it would be an acquiescence by the company in the demands on the part of the city, to regulate the rates to suit themselves and determine what is reasonable, and that these reasonable rates are variable at the will of the council. In other words, if the city should from time to time fix it at a rate so low that it would amount to the destruction of the company's property absolutely, such rates would be reasonable within the contemplation of this resolution, and such acceptance might have been construed as the abrogation of the contract.

This resolution further provides, "That these payments shall not be a waiver of the rights of the city in the premises." There is and was no provision or stipulation, the Court will notice, in this resolution,

which protects the rights of the company, as well as the city; in other words, it is unfair.

This resolution as above stated, offered payment at the *contract price* from August 15th, 1900; that being the date the present company took charge up to November 7th, 1900, the date of the *first resolution; thereby ratifying, acknowledging* and *conceding* the contract to be in the new company, "The Vicksburg Water Works Company." And this resolution offering to pay the *contract price* up to the date of the first resolution, and only $50.00 thereafter, is conclusive, that the mayor and aldermen, understood and intended that the first resolution of November 7th, 1900, was to annul and make void, the ordinance contract of 1886 with Samuel R. Bullock and Company. Who knows better than themselves, what they intended this resolution to mean and do? And that it was to annul and make void the contract of 1886. See their sworn allegations filed in State Chancery Court (on page 32 of Record), wherein they state under *oath* as follows: "Complainants further show that the said mayor and aldermen at a meeting held on the 5th day of November (meaning the 7th), it was resolved and declared that the said board no longer recognized any liability under said contract to said company, *by reason whereof complainants say that said contract no longer exists.*" (Italics ours.) But when the Federal question is raised by appellant's bill in the Federal Court, the city sees it in a wholly different light and meaning. Here the city in answering, and *also* under *oath*, as to the effect, meaning and intent of said resolution, says: "But respondents say that this action on the part of the mayor and aldermen *did not assume to abrogate or take away*

any of the rights of the said complainant, existing by virtue of the alleged contract, and it *is manifest that no such intention or effect can be imputed to such resolution.*" (Italics ours.) (Page 55 of the Record.)

The reversibility of meaning of this resolution is to be admired, its adaptability of construction and effect under oath is so convenient. The apparent necessity of such an adjustable tool in the mouth of a rhetorical piper, sometimes are plain ways for the Court to see what conflicting meaning *plain words may have in different courts.* In the Chancery Court of Warren County, the resolution has one meaning; then when the bill is filed in the Federal Court alleging that this resolution with other acts raises a Federal question, its purpose is warped into other ways and meanings.

The acquiesence in the validity of this contract for thirteen years, without complaint, finding it in all respects acceptable, and agreeable, and while the company is still performing the contract as it is made and agreed to, yet it should have this unjust and unprovoked war made upon it by the relentless desire of defendant to break up and destroy, which war is maintained through the instrumentality of the passage of the Acts of the Legislature of 1900, page 180, when it is a noticable fact that section two of said Act, provides "that said bonds to provide for the construction of a sewerage system were not to be issued nor sold, until the said mayor and aldermen shall have first provided for the purchase or establishment of a system of water works above provided." When this Act is read in conjunction with the resolution of appellee, the purpose of its passage is at once perceived. The condition to require the

ownership of water works before the bonds could be sold to construct a sewerage system, as a condition precedent, which, when realizing the necessity of sewerage, enables the city to ostensibly manifest a *pro bono publico* purpose in its effort to ruthlessly destroy and repudiate an honest and legal obligation, when the purpose of the Act is to compel the company to sell at the arbitrary and unjust and inadequate price of $150,000. The real purpose of the Act in its legal construction is so contemptible, because it, in a conniving and deceptive way, seeks to do in a *quasi* innocent manner an act more destructive to this contract than if it had been an open and positive repudiation of the same.

There is no disadvantage to the city or its inhabitants in owning a sewerage system independent of the water works, and the Legislature of Mississippi meets in January next, and the city can have the Act amended accordingly, if it so desires.

The Court, in dismissing this suit, gave, as a further reason, as we understand it, from its remarks, "that the city had done nothing, and that the company was anticipating something that the city might or might not do."

With all due deference to the Court, how the application of this reason could apply to the want of jurisdiction and be a cause for a dismissal, we fail to comprehend after considerable reflection. The only application we can give it is that the Court, in dismissing the suit, did so because the Court thought appellant had failed to plead sufficiently acts committed (as distinguished from threatened) on the part of the city to warrant the issuance of an injunction, but certainly if this is the meaning of the

Court's remarks and decree, it could not decide whether the injunction was improvidently granted until the Court decided the question of jurisdiction, and if it had decided that it was improvidently granted because the acts complained of had not been consummated or committed, the Court must have intended that it has jurisdiction, because how could the Court consider the propriety of dissolving an injunction without first determining the question of jurisdiction?

But if the lower court was of the opinion no acts had been committed by defendant to warrant an injunction, the Walla Walla case decides that point clearly, for the facts on *these points are the same.* The Court says: "The objections that a Court of Equity has no jurisdiction because the plaintiff has a complete and adequate remedy at law is equally untenable. Obviously it has no present remedy at law, since the city has done nothing in violation of its covenant not to erect competing water works, and the water company has as yet suffered no damage. It is true that after the city shall have gone to the great expense of erecting a plant of its own and of entering into competition with the plaintiff's company, the latter would doubtless have a remedy at law for breach of the covenant. In the mean time, great, perhaps irreparable damages would have been done to the plaintiff. What the measure of such damages was would be exceedingly difficult of ascertaining, and would depend largely upon the question whether the value of plaintiff's plant was destroyed or merely impaired. It would be impossible to say what would be the damage incurred at any particular moment, since such damage might be more or less dependent

upon whether the competition of the city should ultimately destroy, or only interfere with, the business of the plaintiff. This Court has repeatedly declared in affirmance of a general accepted proposition that the remedy at law, in order to exclude a concurrent remedy at equity must be as complete, as practical, and as efficient to the ends of justice and its prompt administration as the remedy in equity," and cases there cited.

The decisions of this Court upon this jurisdictional question are so complete and numerous that we feel that it is unnecessary to recite any reference at all. After a careful review of them there can be no better authorities than Murray v. Charleston, 96 U. S. Rep., p. 432; Los Angeles Water Company v. The City of Los Angeles, 178 U. S., 558; New Orleans Waterworks Company v. Rivers, 115 U. S., p. 674, and especially the Walla Walla case, 172 U. S., p. 10. Here Justice Brown says in delivering the opinion: "These allegations upon their face raise a Federal question of the power of the city to impair the obligation of its contract with the plaintiff by the adoption of the ordinance." The Court further says: "We know of no case in which it has been held that an ordinance alleged to impair a prior contract with a gas or water company did not create a case under the Constitution and laws of the United States. Granting that, in respect to the two classes of cases above mentioned, responsibilities of a somewhat different character are imposed upon a municipality in the execution of its contracts, our attention has not been called to an authority where the application of the constitutional provisions as to the impairment of contracts has been made to turn upon the ques-

tion whether the contract was executed by the city in its sovereign or proprietary capacity, provided the right to make such contract was conferred by the charter. We do not say that this question might not become a serious one; that, with respect to a particular contract, the municipality might not stand in the character of a private corporation; but the cases wherein the charter of a gas or water company has been treated as falling within the constitutional provisions are altogether too numerous to be now questioned, or even to justify citation," and the cases there cited. Also see

Illinois Central Railroad Company v. Adams, 180 U. S., p. 28;

City Railway Company v. The Citizens' Street Railroad Company, 166 U. S., p. 557.

Counsel for the city in the court below argued to the court that these various resolutions and laws passed by and at the instance of the city, were nothing more than mere denial of liability, such as was considered in the case of St. Paul Gas and Light Company v. The City of St. Paul, reported in the May number of the advance sheets of the Supreme Court Reports. As we understand that case, it decided in substance that merely because one should deny liability under a contract, this would not of itself raise a Federal question. The distinction made by the Court and the soundness of the same, is at once very apparent, because a simple denial of itself is not an effort to impair, and unless such denial by its terms, and so intended by its creators, is an impairment of the contract, there can be no Federal question. Even a casual reading of the resolu-

tions of November 7th, 1900, and February 7th, 1901, and the Legislative Act of 1900 now before the Court, shows that it is very different from the resolution in the St. Paul case. In that case there was simply a denial of liability and nothing more. But in this case it is not merely a denial of liability, but the city is by this resolution reducing the price that was agreed upon, by saying it will *continue* to pay a reasonable rental, and resolution of February 7th, 1901, saying we will only pay $50.00 for the use of the hydrants, but does not allude to the water it is receiving for schools, hospitals, public fountains and flushing gutters of the city, free of charge, which is a part of the consideration of the contract. (Said resolution does not annul this part of the contract.)

If the city in this case now before this Court, had simply denied liability under the resolution, and did no more and then left the company to sue for its pay, necessarily there could have been no Federal question and the company would have been compelled to sue in the local courts.

The contract provides that for thirty years, the city should pay for one hundred (100) hydrants, at $65.00 per year for each, the resolution of February 7th, 1901, attempts to liquidate the indebtedness of the city for these hydrants, from November 7th, 1900, to February 7th, 1901, at the rate of $50.00 per hydrant, and to keep this lower price in effect only at the will of the city, though the works were built upon the faith of the obligation of the city to pay the higher price for thirty years. It is obvious upon reading the resolutions of November 7th, 1900, that the legislative body of the city, in adopting the same, was not merely denying liability; it was not merely

declaring the contract at an end; it is as apparent as though a preamble to that effect were inserted that the gist of the resolution is not the *use* or abandonment of the use of the water, *but it is the matter of paying for it.*

The effect of the resolution is in no respect different from a resolution which in express terms, and under the title of a resolution to reduce hydrant rentals would provide that the rate to be charged by the company, be reduced from $65.00 to the present "reasonable" value, to-wit: $50.00, without regard to the prior years of loss to the water works plant and to the capital sunk in it.

For the sake of argument let us suppose that the city council had passed the resolution of November 7th, 1900, and *left out* the concluding remarks, "that from and after August 15th, 1900, they will pay a reasonable compensation for the use of said hydrants." Then we think this resolution would, *by itself*, come under the holding of this Court in the St. Paul case. But can the city or its attorneys contend for a moment that in the same breath of denial (as claimed by them) *in toto*, it can reduce the contract price to a "*reasonable*" one? But why dissect this resolution to get at its meaning and intent when we have the sacred oath of its creators stating in plain and unmistakable language that "*by reason whereof said contract no longer exists*" clearly showing appellee understood and meant *by reason* of the *passage* of the resolution that the contract no longer exists. And the city would have insisted upon this position in the State court if the *Federal* question had not been raised.

And we wish to call attention here to the fact that the said resolution and the allegation (by reason whereof said contract no longer exists), was drawn up by the same person, L. W. Magruder, Esq., and who is now contending before this Court that said resolution of November 7th "does not assume to abrogate or *take away any of the rights of complainant by virtue of said contract, and it is manifest that no such intention or effect can be imputed to such resolution.*" (See answer page 56 of Record.) We merely mention this fact to show there was but one controlling mind with respect to the *resolution* and the *allegations* in the State court suit. In other words, to show the city fully understood what the resolutions meant and intended to do.

What would be the attitude if this Court should send the case back to the State court by reason of dismissing this case, and appellant forced to trial on the sworn allegations in said State court? Could not the learned counsel take the position in the State court, and with propriety, that the contract no longer existed after the passage of the resolution of November 7th, 1900? And would not the appellant in answering be forced to take the *reverse* position and allege "*by reason whereof*" the resolution *did not repeal* and make void the contract of 1886, and that it was *merely a denial?*

But suppose further, for the sake of argument, that the resolution of November 7th, 1900, *had never been passed at all*, can the city or its attorney contend in the face of the resolution passed on February 7th, 1901, when it considered the water works account for hydrant rental, that it is not an impairment of the contract of 1886, when the resolution says, we *will*

pay the contract price up to a certain time, but from and after that time the city will only pay $50.00 per hydrant. Does not this resolution change the price from $65.00, the contract price, to $50.00? And does it not go further and say this $50.00 payment was not to be binding on the city for future payments? Meaning by this that the city could *change* the *price again* at its pleasure; and it is but fair and reasonable to presume from the city's past acts, the price would be downward and not upward.

The final supposition. Suppose the resolution of November 7th, 1900, and the one of February 7th, 1901, or either of them had not been passed, would not this case come clearly within the holding of this Court in the St. Paul case, wherein Justice White, in his concluding remarks, when referring to the citation of authorities, made by attorneys for the Gas Co., to support the point of *mere denial*, says: "We do not stop to refer to all these cases thus relied upon, because we think it results from the statement of the proposition that it is without foundation. However, we briefly advert to a few of these cases, *to show how inapposite they are to the proposition which they are cited to maintain.*" (Italics ours.) And one of the cases referred to by Justice White, to show how *inapposite* these cases were, was the Walla Walla case. There stating, *the point in that case was:* "Effect had been given to a municipal ordinance which provided for the construction by the city of a new water works plant, which was to become a competitor with the contracting company." Is not this appellant's case? Has not the city had passed a *special Act* of the Legislature of Mississippi, authorizing the city to build its own plant in

competition with appellant? Has not the city passed a resolution calling an election for the citizens to vote on the question? And has not the election been held and carried? And is not the city now fully authorized and empowered to build the new and competing plant without any further legislation or any other acts on its part? Hence this case, even on this point by itself, does seem to be clearly within the holding of not only the Walla Walla case, but clearly within the import and meaning of the St. Paul case.

We note the State Court had given effect to the ordinance in the Walla Walla case, but we contend that where there is *concurrent jurisdiction*, such State court's decision to give effect is not necessary if the acts are in themselves and upon their face, as in this case, sufficient to raise a Federal question, to give the Federal Court *original* jurisdiction.

But we contend the Legislative Act of March 9th, 1900, and resolution and election thereunder; the resolution of November 7th, 1900, and the resolution of February 7th, 1901, are collectively and separately such laws, acts and resolutions as impair the contract of 1886, and presents a Federal question upon the face of the declarations of appellant's bill. And we feel assured the Court of this law-abiding country will not allow a party or city to trifle with and repudiate its sacred obligations in this wise.

It being sufficient under the decision of this Court to show merely that there exists a fair and substantial controversy as to a Federal question, we ought perhaps to have limited the scope of this brief to that point. The more so, as it is well settled that if there is a substantial controversy, it is the duty of the lower court to proceed to hear and determine

the cause, and to grant relief to which complainant may be entitled upon the principles of equity, even though the Court should before or at the end of the hearing conclude that there was no impairment of a contract. But the question of the existence of a substantial controversy so naturally leads up to the establishment of our contention that the contract has been *impaired* as to make a general discussion of it pertinent here.

We regret exceedingly that our client is impelled by the mandate of the law to prosecute this appeal, for at that time and now we honestly feel that our position is correct. With only about two days real court work, and the rush that is incident to the disposition of cases in trial courts, we cannot believe that our learned District Judge could have given this cause that due consideration as to have enabled him to enter into the spirit of the distinction made by this Court in determining its jurisdiction in such cases.

JAMES A. CARR,
S. S. HUDSON and
A. N. EDWARDS,
Attorneys for Appellant.

Supreme Court of the United States.

OCTOBER TERM, 1901.

NO. 392.

THE VICKSBURG WATER WORKS COMPANY,
APPELLANT,

Vs.

THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

SUPPLEMENTAL AND REPLY BRIEF FOR APPELLANT.

EXCLUSIVE RIGHT.

1st. Appellant admits, as stated in their original brief, that the Act of the Legislature authorizing the Board of Mayor and Aldermen to contract to build and operate water-works, did not authorize said Board to grant an exclusive privilege. But we do contend that where there is no law against such an act, the City could bind itself legally not to build water works in competition with the contracting party during the life of the contract, and that this exclusive privilege is binding as to the City if not as to others.

See Belleven Water Co., vs. Belleven, 35 Pac. Rep., 693.

Suppose, for the sake of argument, that the Appellee exceeded its authority in excluding EVERY ONE ELSE from building water works during the life of the contract, and that Appellant concedes that other parties other than the City itself might build works in competition; however, we contend that THE CITY ITSELF, WHO IS A PARTY TO THE CONTRACT, CANNOT RAISE THIS QUESTION FOR THE PURPOSE OF TAKING ADVANTAGE OF ITS OWN WRONG, if it found that it exceeded its authority. Hence we think the exclusive privilege granted, is good as to the City. The well recognized principle of the law that although a PART of a contract may be void does not vitiate the whole contract, is applicable in this case, if it be found that appellee exceeded its authority in EXCLUDING ALL OTHER parties from building and operating water works. Suppose that any other party together with the City had been a party to the contract and had given appellant an exclusive contract, if there was no law against it, WOULD NOT THAT HAVE BEEN GOOD AS AGAINST ALL WHO WERE PARTIES TO THE CONTRACT? And as no other party who is not a party to the contract is applying, or attempting to build in this instance, we cannot see, as just stated, how this question can be raised by Appellee. Certainly in Equity and justice it cannot be raised successfully by the Appellee. For, as before stated, the well settled principle of law that although a part of a contract may be void, still this does not annul or defeat that part of the contract which may be good, and will be held sufficient and binding, and should be held applicable to the Appellee in this case.

As to the other parts of the contract (outside of the exclusive feature) Counsel for Appellee does not even argue that they are not good and binding, and in so many words says: "The Ordinance granting to Appellant the exclusive privilege to maintain and operate a system of water works was to that EXTENT illegal and void." * * * "It may be that the City would be compelled to pay the annual price for

the hydrants." * * * "If the City had entered into a contract by which it will be bound to pay for the use of hydrants that would not deprive it of the power and right to put in its own works for the use of its sewers and even for its fire hydrants, PROVIDED they should continue to pay the STIPULATED rental for use of the hydrants."

If this be true, does not the Resolution of November 7th, 1900 and especially of February 7th, 1901, where they set out in detail that Appellee will pay the contract price heretofore paid, up to November 7th, 1900, but from and after that time WILL ONLY PAY $50.00 per hydrant, we submit, that these facts clearly impair the obligation of the parts of the contract CONCEDED by Appellee to be good and binding and brings it within the meaning of Article 1, Sec. 10 of the Constitution of the United States, when the price named in said resolution is $15.00 per hydrant LESS THAN THE CONTRACT PRICE? Counsel for Appellee further says: "The sole question before the Court as to the impairment of the obligation of Appellant's contract, is whether the power of the City to build its own works is such an impairment." This is not the SOLE question before the Court. It is one of the questions, (if it be found Appellee can legally raise this question), but there are two others of equal importance, to-wit: The Resolution of November 7th, 1900, and of February 7th, 1901, wherein they reduce the contract price of $65.00 per hydrant to $50.00.

It is very noticeable how lightly Counsel for Appellee "handled" these resolutions in their brief, and especially the one of February 7th, 1901. In our judgment there can be no question but what they impair the obligations of the contract.

As to the "well laid trap," and the quotation made by Appellee's counsel, "'Tis a fanciful fright of a diseased imagination, conjuring devils from the vasty deep of suspicion." We wish to state a few plain facts on this point. On Feb'y 7, 1901, the Appellee passed the resolution stating it would not pay

but $50.00 per hydrant after the date of the resolution of Nov. 7, 1900. A few days after the passage of the latter resolution, Feb'y 7, 1901, M. O. Crumpler, the Manager and Treasurer of the Water Company, made the following statement in the "Evening Post" of this city referred to in the Mayor's communication. See Record, p. 68.

"There appeared an article in our paper yesterday to the effect that it was reported that Mr. Crumpler stated that he would cut off public hydrants, after reasonable notice was given to the city and underwriters, if the city did not pay the Company's bill for the six months due on the 1st of January. Mr. Crumpler authorizes us to say that what he stated was substantially as follows: 'The city's proposition to pay the Company was only a partial payment and that it was so worded and hedged about that if accepted by the Company it would make the Company commit an act that would be a false position with reference to the contract with the city, and might be construed the breaking of the contract, and for those reasons the Company could not accept under the conditions offered by the city, and that if the city continued to refuse to pay except under those conditions it would soon put the Company in a position that it could not furnish water any longer for fire protection, and that it did not want to do this but would be forced to do so.'"

MAYOR'S COMMUNICATION.

"Mr. M. O. Crumpler, Supt. of the Vicksburg Water Works Co.

Dear Sir:–I notice in the Evening Post what purports to be a statement from you to the effect, that the offer of the city to pay you $50.00 each for the use of the fire hydrants, was made upon such condition as you could not accept. It is my understanding, and I am so advised also by the the City Attorney, that it was not the intention of the Mayor and Aldermen to impose any condition by which your rights, in the controversy with the city should be in any way affected. I am therefore prepared to take your receipt for said payments

stipulating that your rights in the premises shall not be impaired or waived by accepting payment as aforesaid.

Very Respectfully.

(SIGNED) W. L. TROWBRIDGE, Mayor.

Appellee in its answer, and counsel in its brief call attention to this communication from the mayor as showing a spirit of fairness. Hence the "well laid trap" mentioned by Appellants is characterized as, ''Tis a fanciful fright of a diseased imagination, conjuring devils from the vasty deep of suspicions etc." BUT WHEN WE REFER TO THE RECORD IN THIS CASE and find the restraining order was granted on Feb'y 14, 1901, (Record page 12) we think our suspicions of the "well laid trap" were pretty well founded.

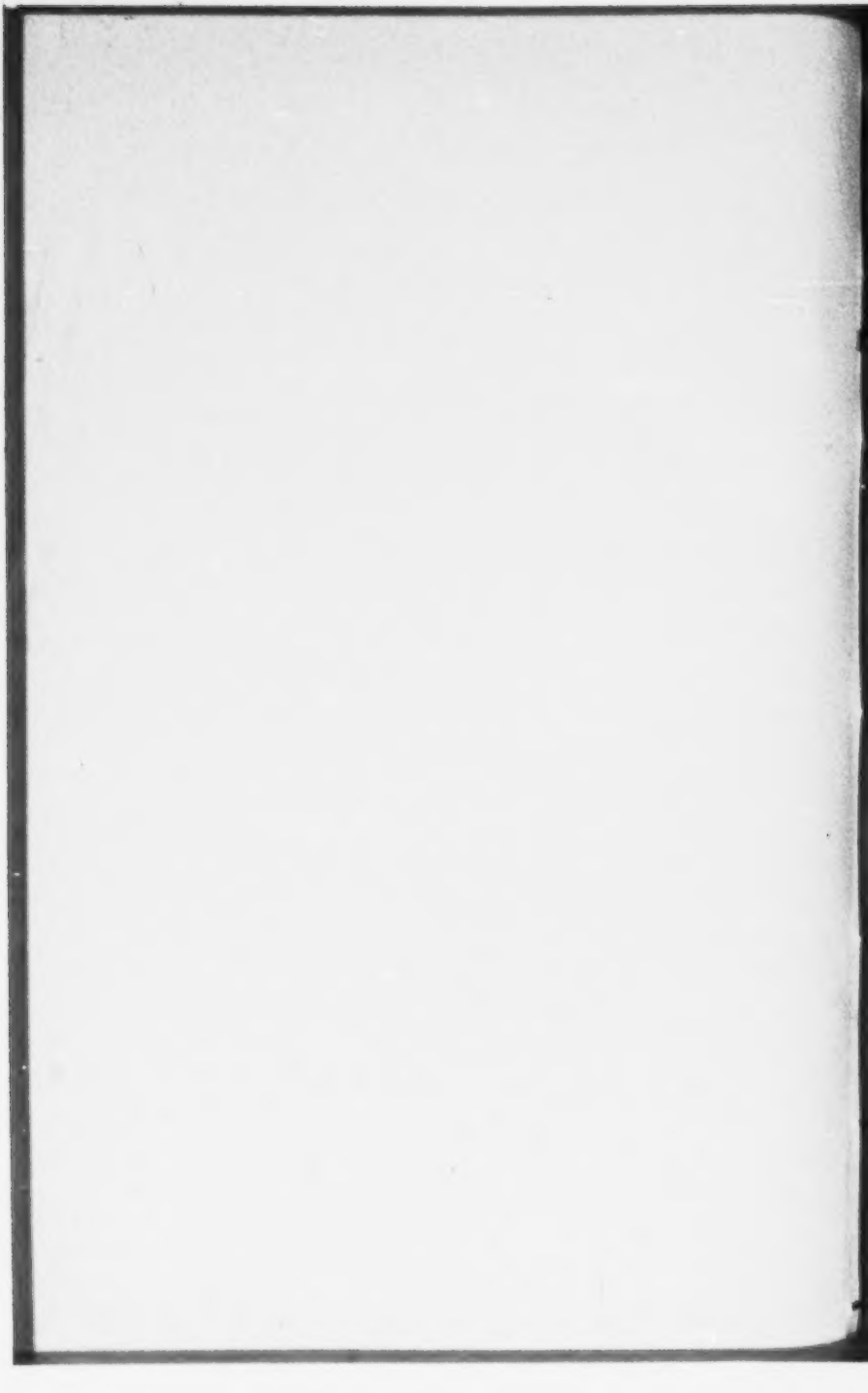
We call attention to the fact that this communication called "fairness" is copied in full on page 68 of the Record, EXCEPT THE DATE OF THE DAY, MONTH AND YEAR, WHICH IN COPYING IT WAS LEFT OFF ENTIRELY; Why is this? This document is in possession of the Water Co., and bears date of Feb'y 15, 1901, and received by it on that date by Special Messenger. The spirit of fairness arose one day after the restraining order was granted.

Appellee's brief, p. 29, states that "while the Record shows this letter to be dated Feb'y 14, we are informed that the Company did not receive it until the 15." It is a fact that the Record, page 68, shows no date at all, not even the month nor year.

"Little things show quickest which way the wind blows."

Respectfully Submitted,

JAS. A. CARR,
S. S. HUDSON,
A. N. EDWARDS,
Att'ys for Appellants.



No. 392.
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Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 392.

THE VICKSBURG WATER WORKS COMPANY,
APPELLANT,

vs.

THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

BRIEF FOR APPELLEES.

L. W. MAGRUDER,
Counsel for Appellees.

(18,245.)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1297

Supreme Court of the United States

OCTOBER TERM, 1901.

No. 392.

THE VICKSBURG WATER WORKS COMPANY,
APPELLANT,

vs.

THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

BRIEF FOR APPELLEES.

STATEMENT OF THE CASE.

The Mayor and Aldermen of the City of Vicksburg adopted an ordinance on the 28th day of November, 1886, whereby they granted to Samuel R. Bullock & Company and their successors and assigns the right to maintain and operate in said city a system of water works for the period of thirty (30) years. It contained the usual provisions in reference to the character and kind of works to be built, the manner of construction, the quality and kind of water to be supplied, the pressure to be maintained upon the mains for fire protection, for the payment for the use of the

fire-hydrants, the method of taxation for that purpose, &c. It also embodied a stipulation that the city would pay for the use of not less than eighty (80) hydrants at the rate of sixty-five dollars ($65) per annum for each hydrant, and at the rate of fifty dollars ($50) for all which might be put in in excess of one hundred (100). The ordinance gave to Samuel R. Bullock & Company the exclusive privilege of supplying water to said city and its inhabitants during the period of said contract.

It also provided that the said Samuel R. Bullock & Company might assign all of their rights under the contract to some corporation to be organized by them, which should be effective upon a notice to the city of such assignment.

Afterwards, on the 1st day of March, 1887, the Vicksburg Water Supply Company was organized and an assignment was made to it by Samuel R. Bullock & Company of all their rights under said contract.

On March 1, 1887, the said Water Supply Company, in order to secure the payment of two hundred and fifty thousand dollars ($250,000) of its bonds, executed a mortgage upon the property described as follows: "All of its real and "personal property, goods and chattels now owned or which "may hereafter be acquired by it, including its land, water "works, buildings, pump-houses, stand-pipes, reservoirs, "machinery, pipes, mains, hydrants, apparatus, and equip-"ments situated in the city of Vicksburg, county of Warren, "State of Mississippi, together with all and singular the "tenements, hereditaments and appurtenances thereunto "belonging or in anywise appertaining, and the reversion "and reversions, remainder and remainders, tolls, rent, "issues, income and profits accruing therefrom; also all and "singular the corporate franchises, privileges, rights, liabil-"ities which the water company now has and can exercise "or shall hereafter acquire and possess. And, also, all the "estate, right, title, interest, property, possession, claim and "demand whatsoever, as well in law as in equity, of the

" water company of, in and to the property above described " or hereafter acquired and each and every part or parcel " thereof with appurtenances."

Afterwards M. O. Crumpler and others, desiring to own said water-works plant, bought all of the first-mortgage bonds and proceeded to foreclose the mortgage,* which was done by advertisement and public sale, the mortgage containing a clause that such sale might be made by the trustee named. The sale was made in August, 1900, and at the sale The Vicksburg Water Works Company (the appellant) became the purchaser, said company have been incorporated and organized by the said Crumpler and others for that purpose.

On November 7, 1900, the Mayor and Aldermen of the City of Vicksburg, conceiving, for various reasons, that no legal liability existed on their part to the Vicksburg Water Works Company by virtue of the contract made with Samuel R. Bullock & Company, adopted the following resolution, to wit: "That the mayor be and he is hereby in- " structed to notify the Vicksburg Water Works Company " that the Mayor and Aldermen deny any liability upon any " contract for the use of the water works' hydrants; that " from and after August, 1900, they will pay a reasonable " compensation for the use of said hydrants.

" That the city attorney shall take such action as shall be " necessary to determine the rights of the city in the prem- " ises."

Before that time, on the 9th day of March, 1900, and before the foreclosure of said property, the legislature of the State of Mississippi passed an act by which the Mayor and Aldermen were authorized to issue bonds to the amount of three hundred and seventy-five thousand dollars ($375,000) to purchase or construct, equip, and maintain a water-works

* This purchase was made *after* the passage of the act of March, 1900. Appellant avers that it MADE A PROPOSITION *before that date* (Record, page 6).

system, to construct and establish a sewerage system, to purchase grounds, to equip and erect a city hall, construct the necessary buildings for the hospital medical college, and for other purposes."

It was provided that of said amount one hundred and fifty thousand dollars ($150,000) should be available to buy or construct a water-works system, and that the issue of said bonds should first be authorized at an election to be held for that purpose.

On the 3d day of July, 1900, an election was held in the city of Vicksburg, in pursuance of said act, to determine whether bonds to the extent of three hundred and fifty thousand dollars ($350,000) should be issued by said city in furtherance of the several purposes named. On the 7th day of December, 1900, in pursuance of the resolution adopted by the said Mayor and Aldermen on November 7, 1900, as aforesaid, a suit was filed in their behalf in the chancery court of Warren county, Mississippi, against the said Vicksburg Water Works Company, denying any liability under said contract with Samuel R. Bullock & Company, on the ground that the obligation of the city to take or pay for the use of said hydrants was not embraced or included in the property described in said mortgage, and also upon grounds that the contract had not been complied with by the said Bullock or the said defendants, and also for that the said Mayor and Aldermen were not authorized to make and enter into a contract in the manner in which it had been adopted. In the meantime the Vicksburg Water Works Company, to wit, on the 28th day of October, 1900, obtained what purports to be a quitclaim deed from the Vicksburg Water Supply Company of all of the rights which it held against the city of Vicksburg, including the stipulation to pay rental for the hydrants. A motion to remove the cause to the Federal court was denied by the said chancery court, and thereupon, on the 16th day of February, 1901, appellants filed their bill in this case, and obtained by an *ex parte* order the writ of injunction now in force.

THE PLEADINGS.

The bill of appellant avers that it is subrogated to all of the rights of the Vicksburg Water Supply Company against the said city which had been assigned to it by Samuel R. Bullock & Company. It asserts that it acquired these rights as purchaser at said foreclosure sale, and also by virtue of said quitclaim deed.

It avers that the act of the legislature of the State of Mississippi authorizing an election to be held for the issuance of bonds for certain purposes, of which one hundred and fifty thousand dollars ($150,000) were authorized to be used in the purchase of a system of water works or in the construction thereof, and the act of the Mayor and Aldermen in ordering said election, and the further resolution adopted by it on the 7th day of November, as aforesaid, constituted an impairment of the obligation of its alleged contract with the city.

These acts by the city are charged to be "unjust and unlawful actions by said city, because they assume to abrogate and take away its franchises and contract rights;" that they were adopted "in pursuance of a confederacy and a con-"spiracy to injure and destroy its credit and to destroy the "value of its property;" that they "thereby persistently and "unlawfully endeavored to disable said company from "carrying on its business and to destroy its credit and the "value of its property and to coerce said company to sell its "water works to the city for an inadequate price." There follows in said bill a mass of repetition of these averments in a somewhat confused form, vaguely coupled with irrelevant and immaterial matters, such as that, pending a city election which was held in December, 1900, false and inflammatory "rumors and articles prejudicial to the com-"plainant were originated and circulated by officers and "agents and confederates of said city;" that the suit instituted

by the city in the chancery court of Warren county against said water works company "was a part of said conspiracy to "take away the contract rights of said company and to "coerce it to sell its property for less than its value;" that the Mayor and Aldermen had refused to pay the contract price of sixty-five dollars ($65) per hydrant and only offered fifty dollars ($50) per hydrant, which is also charged to be "an offer to pay an inadequate price;" * * * "that "the city by this offer is confederating, conspiring, and "endeavoring to coerce and enforce it to commit an act "whereby the ordinance will be annulled," claiming that the offer by the city to pay fifty dollars ($50) upon the condition that such payment should not be considered a waiver by the city of its rights in the premises would operate, if accepted, to waive the rights of the complainant. On the 23d day of April, 1901, after an injunction in this case had been issued, a supplemental bill was filed, setting forth specifically the order of the Mayor and Aldermen directing an election to be held to determine whether the sum of three hundred and fifty thousand dollars ($350,000) in bonds should be issued for the purchase or construction of a water-works system, a sewerage system, and a city hall. It is also averred therein that the said election was void and no bonds could be issued in pursuance thereof; that by the contract with Samuel R. Bullock and Company the city was precluded from issuing bonds to build a water-works system of its own. It is nowhere averred in said bill or supplemental bill that the said Mayor and Aldermen designed to build a system of water works or proposed to issue any bonds therefor.

Upon the prayer of the bill the following writ of injunction was issued:

UNITED STATES:

Circuit Court of the United States of the Southern District of Mississippi for the Western Division Thereof.

To the Mayor and Aldermen of Vicksburg, Mississippi, its officers, servants, employés, or agents, attorneys, counsel, solicitors, Greeting:

Whereas a bill of complaint has been lately exhibited in the circuit court for the southern district of the western division of Mississippi, by the Vicksburg Water Works Company to be relieved touching the matters in said bill contained, and praying for an injunction restraining you as hereinafter set forth, and obtained a fiat of the Honorable H. C. Niles, judge, granting said injunction, and bond and security having been given as required by said fiat and statute, we therefore strictly enjoin and command you under penalty of contempt of court that you absolutely refrain from assuming to abrogate and take away the franchise and contract rights of complainant, and from endeavoring to disable complainant from carrying on its business, and to coerce said complainant to sell its water works to the defendant for the said inadequate and arbitrary price, and from otherwise carrying on the unlawful conspiracy set out in said bill of complaint, and from perpetuating any minutes, or resolutions or ordinances of its own, whereby it denies liability or seeks to annul, or refuses to pay complainant contract price for water, and that defendant be compelled to pay the Vicksburg Water Works Company for water used by it as per the ordinance price as aforesaid, and to continue to do so until this cause is heard upon its merits that the rights of all parties may be preserved, and from any further proceedings against said complainant touching any of the matters in said bill contained, until this honorable court shall make another order to the contrary hereof.

In testimony whereof, I, the undersigned clerk of the circuit court of the United States for the southern district of the western division thereof, have hereunto set my hand and affixed the seal of said court at Vicksburg, Mississippi, this the 16th day of February, A. D. 1901.

L. B. MOSELEY, *Clerk.*

[SEAL.] C. D. BANKS, *D. C.*

To the United States marshal for the southern district of the western division of Mississippi, to serve and return.

Received at Biloxi, Mississippi, February 19th 1901, and executed at Vicksburg, Mississippi, by reading this process to W. L. Trowbridge, mayor of the city of Vicksburg, Mississippi, and handing to him a true copy thereof, at the hour of 4.40 p. m. this February 21st, 1901.

F. W. COLLINS,
U. S. Marshal,
By R. O. EDWARDS, *Deputy.*

The injunction including a mandate to the defendants to pay complainant the amount it claimed to be due by the defendants was issued upon an ex parte order and without notice to the defendants of any sort.

On April 30, 1901, several special demurrers and pleas were filed by the defendants, which will be found on pages 49 to 54, inclusive, in the record; but on June 21 the defendants filed their answer (see Record, pages 55 to 68, inclusive) which embraced all of said special demurrers and pleas, and when the court met, on July 3, an order was made granting defendants leave to withdraw said pleas and demurrers, and to file the answer marked by the clerk filed June 21, 1901. At the same time that said answer was filed there was filed a motion to dissolve the injunction (Record, page 55).

Several motions were made by the complainant to strike the pleas and demurrers from the files and to strike the answer from the files, and finally "to require the defendants to elect on which they will stand, whether on demurrers to whole bill or answers."

The court having granted the defendants leave to withdraw the special pleas and demurrers, and to file their answer, all of said motions of the complainant were overruled; so that when the case came on for hearing before the court *it was upon the original and amended bill, the answer of the defendants, and upon said motion to dissolve.*

I desire to make this plain, because the record does not contain the proceedings in consecutive order.

The motion to dissolve is as follows:

"The defendants now come and move the court for a dissolution of the injunction heretofore issued against them and for ground of said motion say:

"1st. Because said injunction was improvidently issued.

"2nd. Because the bill and amended bill filed by said complainants do not raise any question or propound any demand or right cognizable within the jurisdiction of this court.

"3rd. There is no equity upon the face of said bills.

"4th. Because the injunction is in many respects indefinite and vague and so uncertatn that it is not possible to determine what acts are embraced in said injunction.

"5th. Because said injunction should be dissolved by reason of the matters of law and fact set forth in defendants' answer to said bill."

ORDER OF THE COURT.

"Coming on to be heard the motion to dissolve the injunction herein, and the defendants now having moved the court for leave to file the answer, herewith presented and marked by the clerk as filed June 21st, 1901, and to withdraw the pleas and demurrers filed April 30th, 1901, it is ordered that leave be granted to file said answer and withdraw said pleas and demurrers, *but that the question of the jurisdiction of this court to hear the matter in controversy, raised by said answer, shall be first presented and argued.*"

The question of jurisdiction is raised by the motion to dissolve and also by the opening paragraph of the answer, which is as follows:

"They admit that the board of Mayor & Aldermen on November 7th, 1900, adopted a resolution which is in words and figures as follows:

"That the mayor be and he is hereby instructed to notify the Vicksburg Water Works Company that the Mayor & Aldermen deny any liability upon any contract for the use of the water-works hydrants; that from and after August 1900 they will pay a reasonable compensation for the use of said hydrants; that the city attorney shall take such action as shall be necessary to determine the rights of the city in the premises."

But respondents say that this action on the part of the Board of said Mayor and Aldermen "did not assume to abrogate or take away" any of the rights of said complainant existing by virtue of the alleged contract, and it is manifest that no such intention or effect can be imputed to such resolution.

That the said resolution does not seek to destroy or impair any contract, but merely denies legal liability thereunder; that the act of the legislature of the State of Mississippi approved on the 9th day of March, 1900, does not impair the obligation of the contract made with Samuel R. Bullock & Company, as averred in said bill.

That the averments in said bill in this regard do not constitute any ground for relief cognizable within the jurisdiction of this court; that complainant has not averred and set forth in its bill any act having the effect to impair the obligation of said contract, and this court is therefore without jurisdiction to hear and determine the matters in said bill contained."

The following is the judgment of the court:

"This cause coming on to be heard upon the motion to dissolve the injunction heretofore issued in this cause and the court now being advised in the premises and it appearing that there is no Federal question involved in the controversy presented by the pleading, it is therefore ordered, adjudged and decreed that the said injunction be and the same is hereby dissolved, and that the bill of the complainant be and the same is hereby dismissed, and that execution issue therefor for the costs in the case."

WE CONTEND.

The alleged contract of the appellant is not impaired by the act of the legislature of the State of Mississippi approved March 9, 1900, and the resolution of the Mayor and Aldermen:

I. Because it appears from the charter of said city—the law authorizing the contract for water works—that said city was not empowered to grant to appellant the exclusive right to maintain and operate a system of water works.

II. The act of March 9, 1900, does not impair any contract granted appellant under the charter, because:

1. Such is not its legal effect and necessary consequence, for said act merely confers authority either to purchase or to build a system of water works, to build a sewerage system, and to erect a city hall, and for these purposes to issue three hundred and fifty thousand dollars ($350,000) of bonds, one hundred and fifty thousand dollars ($150,000) to be applied to the water works, provided, at an election to be held for that purpose, such issue would be approved by a majority of the electors. The power is discretionary and it must be presumed will be exercised with due regard to the rights of appellant.

2. Because if appellant's rights be contravened in the premises it must result from the building of the works. The result must come from the *exercise* of the *power* and not from the naked grant of such a power.

III. The contract is not impaired by the Mayor and Aldermen in ordering an election to approve the issue of said bonds, for like reasons as above indicated; for notwithstanding said law and said election, the said Mayor and Aldermen have taken no action for the construction of said

works, and have not decided that they would undertake the work.

Indeed, the bill does not charge anywhere that the city intends to build said works, or that it has by any action indicated such a purpose, *nor are they enjoined from building any works.* On the other hand, in their answer said Mayor and Aldermen expressly declare that they have no purpose whatever to take any action in the premises, or even to consider the question until their legal liability, if any, to appellant be first ascertained.

A city cannot be enjoined from taking any action looking to the exercise of an unlawful power. It cannot be enjoined from passing an illegal ordinance or resolution unless passage of the resolution itself might inflict injury.

It can only be enjoined from giving effect to or from carrying out such a resolution.

IV. The resolution adopted November 7, 1900, denying any liability to appellant, is a mere denial of liability and does not seek by legislative force to abrogate or impair appellant's rights, and the resolution of February, 1901, offering fifty dollars ($50) per hydrant is to the same effect.

THE ARGUMENT.

It will be seen upon an examination of the bill that there but are three facts alleged to be done by the city and the State of which can be predicated the contention that the contract claimed by the complainant has been impaired within the meaning of the Constitution of the United States. These are, as before stated:

1st. The passage of said act of the legislature of the State;

2d. The ordering and holding an election in pursuance of said act by the Mayor and Aldermen of the city; and,

3d. The resolution adopted by the Mayor and Aldermen

on the 7th day of November, 1900, denying their liability under said contract, and a like resolution of February, 1901.

It is true that the bill abounds with averments charging vaguely and indefinitely a conspiracy on the part of the Mayor and Aldermen "to injure and destroy the credit of "the Vicksburg Water Works Company, and to destroy the "value of its property, and that it assumed to abrogate and "take away the franchises and contract rights of the com-"pany," and "persistently and unlawfully endeavored to dis-"able said company from carrying on its business" and "to "coerce it to sell its water works to said city for an inade-"quate price." It is also manifest that there is a shallow effort, by such characterization and phrasing, to give fictitious color and effect to the facts set forth. There are many immaterial and irrelevant matters paraded in the same vehicle of phraseology and description. It is sufficient for this argument to say that there is nothing in the bill whatever upon which complainant can base its contention except upon the facts above indicated.

FIRST.

The Exclusive Privilege.

1. *The validity of a claim of an exclusive privilege will be decided on the question of jurisdiction, if the right is determinable by construction upon the face of the law.*

2. *No exclusive privilege was granted to appellant.*

It is claimed by the appellant that the act of the legislature of 1900, authorizing the city to buy or build a system of water works, and certain municipal acts are laws which impair the obligation of its contract. It contends that a contract exists between it and the city of Vicksburg, entered into originally with Samuel R. Bullock & Company; that

said contract was entered into in pursuance of the authority conferred by its charter, which empowered it "to provide for the erection and maintenance of a system of water works to supply said city with water, and to that end to contract with par.y or parties who shall build and operate water works."

The contract is set forth in an ordinance, by the first section of which it is provided that "the exclusive right and privilege is hereby granted for the period of thirty (30) years from the time that this ordinance takes effect with Samuel R. Bullock & Company, their associates, successors and assigns, of erecting, maintaining and operating a system of water works * * * within the corporate limits of the city of Vicksburg."

At the very threshold of this case the question is presented, upon the face of the law and the face of the contract, as to whether or not the appellant has any exclusive rights as against the city to maintain and operate a system of water works. This question must be resolved upon the face of the law and the face of the contract itself. We concede the general proposition, if there be a real and substantial contention as to whether any contract exists, the court will exercise its jurisdiction and dispose of the contention upon a trial, but we submit that the authorities do not sustain the proposition that the court will pass upon the *validity* of every claim which may be set up. The assertion that a contract does exist must be something more than a bare averment. It certainly must appear upon the face of the pleadings that the claim presents a real and substantial dispute. If upon the face of the two laws, one of which is said to impair the rights given by another, it should manifestly and clearly appear that no contract right under the law exists, it surely cannot be said to involve a substantial dispute to be looked to by this court as a part of its jurisdiction.

Two things are essential to the right of invoking the jurisdiction of this court in such cases:

1st. That there must be some contract, some subsisting and legal right; and,

2d. That it is impaired by the law complained of.

It is true that if the facts upon which the legal right or contract is based are seriously disputed, if there be a substantial contention in this regard to be ascertained and determined upon a trial before the court, it will be assumed for the purpose of jurisdiction that such contract does exist, and the validity as to that claim will be passed upon; but in cases such as this, where the single question as to whether any contract right exists at all lies upon the very face of the contract itself, which is set out from the necessity of the case by the appellant in its bill, then it would seem that the question so presented is one of jurisdiction, to be passed upon as such. Nothing more can be done by way of pleading or proof to affect the issues presented as to the validity of appellant's contention for an exclusive privilege. The issue is completely made up. All the law and all the facts are before the court. Nothing can be added to them upon any trial. Its solution rests alone upon the provisions of the law and the terms of the contract.

If appellant has an exclusive right to maintain water works, as provided in the contract, it is a question which can only be resolved by determining the extent of the municipal powers of said city under the act of the legislature authorizing the contract. Whatever rights the appellant has in this respect must be determined *ex vi termini*, by the very terms of the statute. It is not a substantial controversy, the validity of which is to be settled by an adjudication in this court as a part of its jurisdiction. There may be room for discussion as to the extent of the powers of said Mayor and Aldermen in respect to said contract right, but it depends solely upon the interpretation and construction of the powers of the city. The controversy, in order to be "a real and substantial dispute," must possess some other element than that which arises merely from the

construction to be given a statute upon the very face of its terms. Whether the exclusive privilege claimed by the appellant is an obligation which has been impaired by a statute raises a question which must be decided by ascertaining *what are the powers* of the city under one law, and whether these powers have been impaired by another law. The decision of this question, from the nature of things, must involve a comparison of the powers conferred by the two acts. It is therefore a jurisdictional question. It cannot be taken for granted that appellant has an exclusive privilege, however earnestly it may so declare. It cannot claim that its contention raises a real and a substantial controversy, so as to give the court jurisdiction to adjudicate the validity of the claim, because the validity of its claim must be resolved upon the very face of the law which it says has been impaired.

In such a case no good purpose can be served by remanding for trial to the court below the question of the validity of appellant's contract, based upon the interpretation of statute. If upon the face of the statute and of the contract the appellant has no "exclusive privilege," if every fact necessary to its decision is now before the court, why should it not now be determined as a jurisdictional question? If the whole controversy may at once be settled by finding that the appellant has no exclusive privilege, it would be a tedious and costly delay to postpone the determination of that question to a trial upon its merits and a second appeal. Of course, this argument proceeds upon the theory that the act of March, 1890, may impair the charter law of the city, provided said charter authorized the exclusive grant to the appellant. It was not made to appear affirmatively in the case of Grace *vs.* The American Insurance Company, 109 U. S., 278, that the facts as to citizenship conferred jurisdiction. The court of its own motion took notice of the fact, but nevertheless *decided the case upon its merits.*

"As the judgment must be reversed and a new trial had, we have felt it to be our duty, notwithstanding the record, as presented to us, fails to disclose a case of which the court below could take cognizance, to indicate, for the benefit of parties at another trial the conclusion reached by us on the merits." * * *

This is not a case in which it appears "that some title, right, privilege, or immunity on which the recovery depends will be defeated or sustained by a construction of the Constitution," which is the rule laid down in Ames *vs.* Kansas, 111 U. S., 449.

Starin *vs.* New York, 115 U. S., 215, and T. P. R. R. Co. *vs.* California, 118 U. S., 109.

The question here is not whether the act of March, 1900, is unconstitutional because by its effect it impairs the obligations arising under another law, but the question is what is the scope of the powers under the first act, and this does not depend upon a construction of the Constitution.

To make this plain, suppose in the case of Southern Railroad *vs.* California, *supra*, the laws of Congress alleged to be contravened by the laws of the State levying certain taxes had declared that the right of such taxation might be exercised by the State, would it not appear upon the face of the proceedings that the railroad did not possess the right it claimed under the acts of Congress? In this case the construction upon which appellant bases its rights is a construction of the powers of a State law and not of the Federal Constitution.

If it shall appear clearly as a matter of construction that the exclusive grant to appellant was not authorized, there would be no room to apply the Constitution.

Suppose that the act under which appellant claims, and which it has set out, expressly reserved to the city of Vicksburg the power to build its own works, how, in such case, could the Constitution be invoked?

If the effect and meaning of the law, under proper interpretation, did not give to appellant the right it claims, it cannot assert that a controversy exists involving the application of the Constitution. A real and substantial dispute must be an intelligent one, and must involve a constitutional construction.

Where one claims under a grant from a State and the source of his right be a State law, and if, by such law, no such right exists, it cannot be impaired. The contention for such a construction does not involve a Federal question. It is not such a controversy that the court will take jurisdiction of to determine its validity. Its validity will be decided to determine the question of jurisdiction.

In Osborne *vs.* Bank, 9 Wheat., Chief Justice Marshall says, on page 825:

"The appellants say that the case arises on the contract. But the validity of the contract depends upon a law of the United States and the plaintiff is compelled in every case to show its validity. The case arises emphatically under the law. The act of Congress is its foundation. The contract could never have been made except under the authority of that act. The act itself is the first ingredient in the case; its origin is that from which every other part arises."

What is said above as to that contract as being based upon an act of Congress is equally applicable to the one in this case as taking its life and being from the State law.

In Starin *vs.* New York, *supra*, jurisdiction was denied because the question of the rights of the city of New York depended solely upon charter rights of the city and a construction of the State laws in that regard.

In the case of Benjamin *vs.* New Orleans, 153 U. S., 431, it was decided as a *jurisdictional question* that alleged rights under one statute were not impaired by another.

"The contention was that the holders of these warrants had a right to bring an action at law against the board of police to recover thereon, and that the dissolution of the

board left the complainants without remedy except in a court of equity, judgment and execution at law being required because impossible by reason of the dissolution of the board. Therefore, the court in chancery was appealed to to lay hold of the assets of the board as in the nature of a trust fund and apply them to the payment of the claims. Those assets, as shown by the bill, were the apportionments, the tax levies, and the taxes collected. These were the means provided by law for the payment of debts created by the board, and if they were left unaffected by the repealing act the alleged impairment had no basis to rest on. That act was essentially a mere change of an instrumentality of municipal government. It abolished the police organization established in 1868, and vested in the city the function of maintaining its own police. This legislation was not in contravention of the Constitution of the United States, and was enacted in the exercise of the undisputed power of the State in that regard. In making the change no obligation rested on the State to create an independent and corporate successor of the board or to provide for the application of its assets to the payment of its debts if existing laws were ample to effect that purpose. * * * Jurisdiction could not be obtained upon the bare averment of an anticipation that the city might rely on the repealing act as wiping out apportionments, tax levies, and tax collections, and that the State courts would so decide. And the bill made no such specific averment, with which, indeed, many of its allegations were wholly inconsistent; while the defense of the city not only rested on no such ground, but the answer denied that the repealing act was susceptible of that construction or could be given that effect."

Directly in point is the case of St. Joseph and Grand Island R. Rd. Co. vs. Steele, 167 U. S., 660. The railroad company filed in the United States circuit court its bill to enjoin the collection of certain taxes levied to tax a bridge as a toll-bridge.

It alleged "that the controversy involved the construction of certain acts of Congress" granting to the company the right to build the bridge across the Missouri river; "that "the bridge was built under these acts, and that all of its

"revenue-producing facilities were derived therefrom, and "that the controversy was over the right to tax this bridge." It was said:

"We cannot accede to the proposition that because the acts of Congress, which authorized the construction of the bridge in question, gave the right to build a railroad and toll-bridge the conceded power of the State to tax did not extend to the bridge in both aspects. Nor can we agree that the making of such a contention raised a Federal question of a character to confer original jurisdiction in the circuit court of the United States. Not every mere allegation of the existence of a Federal question in a controversy will suffice for that purpose. There must be a real substantive question, on which the case may be made to turn. Nor can jurisdiction be inferred argumentatively from the averments in the pleadings, but the averments should be positive."

Where parties assert rights which are wholly determined by the State laws, no Federal question is raised.

Romie *vs.* Casanova, 91 U. S., 380.
McStay *vs.* Friedman, 92 U. S., 723.
Goldwashing & Water Co. *vs.* Keyes, 96 U. S., 199.

Jurisdiction will always be denied if "*by legal certainty*" it appears that ground of jurisdiction does not exist.

Wetmore *vs.* Ryner, 169 U. S., 122, and cases cited.

The appellant has no right, except by virtue of the charter powers of the city conferred by the legislature. These must be looked to to ascertain its right, and if upon a fair interpretation they give it no right, it must follow as a "*legal necessity*" that the act of 1900 does not impair it.

The court will take notice:

That there is no claim set up by appellant that any right which it possesses under said contract will be affected by the proposed acts, *except* "*the exclusive right*" to operate water works. The grant of the right to occupy the streets

and of the franchise to operate a system of water works is not affected by the laws complained of.

It may be that the city would be compelled to pay an annual price for the hydrants. The denial of liability for their use under a contract is not, of course, a law impairing a contract. In this respect this case is to be distinguished from—

City R. R. Co. *vs.* Citizens' R. R. Co., 166 U. S., 564.

In the latter case there was a grant to the City Railway Company of the right to use certain streets then occupied by the Citizens' Company, and it was alleged to be impracticable that the same streets could be used by both companies.

The sole question before the court, as to the impairment of the obligation of appellant's contract, is whether the power of the city to build its own works is such an impairment.

The injunction is an injunction against competition by the city, and this brings us to the proposition that—

2. *The ordinance granting to appellant the exclusive privilege to maintain and operate a system of water works was to that extent illegal and void.*

A municipality has no power to grant a monopoly or an exclusive privilege, unless such right is expressly conferred upon it as one of its charter powers.

"The rule which governs interpretation in such cases has often been declared. We expressed it, following many prior decisions, in Detroit Citizens' Street Railway *vs.* Detroit Railway, 171 U. S., 48, to be that the power of a municipal corporation to grant exclusive privileges must be conferred by explicit terms. If inferred from other powers, it is not enough that the power is convenient to other powers, it must be indispensable to them."

Freeport Water Co. *vs.* Freeport City, vol. 180, U. S., 598.

In the case of Walla Walla, 172 U. S., page 14, it is said:

"Had the privilege granted been an exclusive one, the contract might be considered objectionable upon the ground that it created a monopoly without an express sanction of the legislature to that effect."

The full extent of the power conferred by the legislature of Mississippi upon the city of Vicksburg was the authority to provide for a system of water works and supply said city with water and an authority to make contracts for that purpose.

There is nothing in this act which authorizes the grant of an exclusive privilege or a monopoly.

THE CASE OF WALLA WALLA DISTINGUISHED.

1st. In the case of Walla Walla, *supra*, there was an express stipulation in the contract that the city itself should have the right to make a contract for a water supply with other parties during the period of said contract if it saw fit.

2d. There was an express stipulation that the city itself would not during the period of that contract build a system of water works and enter into competition with the water company. It will be thus seen, as this case holds, that no monopoly was here created, and it was not illegal on the part of the city to bind itself not to build its own water works.

The case of Grant *vs.* City of Denver is cited in the brief for appellant. Not having been reported, we have not seen it, but we respectfully submit, assuming that it has been correctly quoted that the reasoning and conclusion in this case are not supported by the adjudications. It attempts to follow the doctrine laid down in the case of Walla Walla.

It holds that a contract made by a city for a supply of water embodies by implication a stipulation that it will not build works of its own. It justifies the contract in that case as not granting a monopoly because it "did not grant the exclusive " privilege to the Denver Co.; hence the city did not exceed " its powers conferred upon it by the charter when it made " the contract." Moreover, in order to reach its conclusion, the court did that which we respectfully submit it had no right or power to do. It created for the parties a contract which they themselves did not make. It is a daring assumption to declare from the contract in that case "that it " was within the contemplation of the parties at the time the " contract was made that the city should not have the right " to erect works of its own," and thereby became an obligation of that contract.

The judge says further, " Did the minds of the parties to " the contract ever meet and assent to such a proposition?" meaning the proposition that the city should have said right. In the first place, it is a question of the powers of the city, the method of whose exercise is to be strictly construed. It is not a question as to whether or not the minds of the parties met upon the proposition as put in that case. The question is, Did the minds meet and concur in the proposition that the city should not possess the right to build works? If so distinct and independent a right was agreed to, why was it not expressed, and how is it to be supplied by implication? We respectfully submit that a municipal body cannot be held to surrender so important a power and the rights of the public in so grave a matter by such a far-fetched implication; nor do we see, if the right to make another contract is to be conserved in the public interest by which a municipal corporation may enter into another contract with other parties for a supply of water, why it may not itself build its own works. It is objected that thereby competition would be created. Would not exactly the same result follow if it made a contract with

other parties to build the works? Is it not because of the very fact that *the right of competition is to be preserved in the public interest that an exclusive grant is void under the law unless expressly authorized?*

Suppose in this case there had been, according to the original contract, no stipulation that the city of Vicksburg should pay anything for its fire-hydrants, but that the contract was a bare grant of a franchise to use the streets and to operate a water-works system, would it in such case be held for an instant that it would be precluded from building its own water works? If the city has entered into a contract by which it will be bound to pay for the use of hydrants, that would not deprive it of the power and right to build its own works for the use of its sewers, and even for its fire-hydrants, *provided* they should continue to pay the stipulated rental for the use of the hydrants in case it should be found that they were liable so to pay.

In other words, the franchise grant to the appellant and whatever rights it possesses under that contract for compensation for the use of its hydrants is not involved in this case, because whatever right it possesses in these respects can be enforced notwithstanding the city may build its own water works.

Neither the acts of March, 1900, nor anything done in pursuance thereof by the city have the legal effect to any extent to impair any of the rights of the appellant under his contract, *except the sole right to the "exclusive privilege" mentioned.* If the contract was void in this particular, then it certainly is within the power of the city to make a contract with other parties. The protection of the Constitution cannot be given to avoid the injury resulting from such competition. If the Constitution does not afford protection against competition in one state of the case, how can it be extended in the other? If the city may inflict injury my making a contract with others to build works, why may it not build the works itself? If it shall have the power to authorize

another to do a thing, why does it not possess that power itself, in the absence of any contract to the contrary?

Something has been said about the whims of public sentiment taking shape in municipal action to construct works to the injury of those existing and against which it is well to make provision by contract. It may be well to observe that the limitations upon the exercise of municipal powers are to be maintained for the public good. It is safe to affirm that corporations, in the exercise of exclusive privileges and grants of public franchises, as a rule press to the uttermost their powers of monopoly; that the public are often the victims of a despotic use of such powers. It is safe to affirm that municipalities would not be moved to incur enormous expenditures of money in order to secure certain benefits if they were afforded faithfully and reasonably by those charged with that duty. It may also be observed that those who undertake to enforce the performance of those duties find their paths beset with difficulties such as these corporations know so well how to set up.

SECOND.

1. *The grant of powers under act of 1900 does not have of itself the legal effect to impair the contract.*

2. *Acts of a city cannot be anticipated.*

The act of the legislature and the election held by the Mayor and Aldermen in pursuance thereof do not impair the obligation of complainant's contract, if it has one. Conceding that the complainant is entitled to the "exclusive right" to operate a system of water works for thirty (30) years from the date of its contract, yet it is plain that the act in question does not, nor was it intended by legislative force to, impair complainant's contract. The entire act should be looked to to determine its scope and its

purpose. It was intended to authorize the Mayor and Aldermen to issue bonds to the extent of three hundred and fifty thousand dollars ($350,000) for the purpose of construction of a water-works system, for the building of a city hall, and for the construction of a sewerage system, one hundred and fifty thousand dollars ($150,000) of said amount to be used for the water works. It is plain that this discretionary grant of authority to the city does not have the effect as a necessary consequence of displacing complainant's rights under said contract. It would seem plain that it is not the grant of the power to do a thing which impairs the obligation, nor does the attempted investiture of a city with such authority have that effect. It is the exercise or attempted exercise of the power. It is the *building* of the works which does the injury. If, in addition to the act of the legislature granting such naked power, and if, in addition to the holding of said election by the city in pursuance thereof, the city had taken official action looking to the construction of said works by authorizing bids to be advertised for, or in any way had declared its design and purpose to begin the work, a different case would be presented; but it must be remembered, in the first place, that the bill does not charge the city with any design to build said works or with any act evincing such purpose, and, on the other hand, it was expressly denied by the city. It must be presumed that the city will exercise its powers with due regard to the rights of the complainant. It must be presumed that the election which was held was held for the purpose of building a sewerage system and for building a city hall. It must be presumed that the said power to build a water works company would be exercised under the law at such a time and in such a way as would be consistent with the complainant's rights. Beside this, mere apprehension that illegal action would be taken by the city cannot be the basis of enjoining such action. The municipality cannot be enjoined from passing any resolution or passing any ordinance looking to

the doing of anything. They can only be enjoined from carrying into effect the purpose of such official action.

The following authorities, we submit, sustain the foregoing proposition:

N. O. Water Co. *vs.* New Orleans, 164 U. S., 478.
Chicago *vs.* Evans, 24 Ill., 52.
Des Moines Gas Co. *vs.* Des Moines, 44 Iowa, 505.
1 Dillon, Corporations, § 308.
2 High on Injunctions, § 1246.

THIRD.

The resolution which was adopted on November 7, 1900, by the Mayor and Aldermen simply denies any liability upon any contract for the use of water-works hydrants. It proposed to pay the water works company a reasonable compensation for their use, and it requests the city attorney to take proper legal action to determine the rights of the city in the premises. If this resolution can be construed to have any legislative force looking to an abrogation of complainant's rights, then it will not be possible for any municipal corporation to ever deny any liability under any contract it may have entered into, upon any ground whatever, without being held to have passed a law impairing the obligation of a contract.

We submit that this precise point has been decided in the case of St. Paul Gas Light Co. *vs.* City of St. Paul, 181 U. S., 142.

The contention in the brief for the appellant that, in a bill by the city to have the contract annulled, among other things, it averred that by reason of the resolution of November 7 "said contract no longer exists" is to be considered in interpreting the resolution, is so barren of reason as scarcely to need notice. It is sufficient that the legal effect of any law or resolution is to be determined by its terms, and not by any construction which may be asserted in pleadings.

The averment certainly does not state a correct proposition of law if it be construed to declare that the resolution had the legislative force to annul the contract. If it did have such effect, the suit to annul the contract was a vain proceeding, and of course the averment should be considered in connection with the other averments and the general purpose of the bill and the relief sought.

There is another contention of appellant which, we think, is also equally without any just basis, to wit, that the report of the water committee and the action of the board thereon, taken in February, 1901, whereby an offer to pay fifty dollars ($50) per hydrant was effective as a legislative act to impair appellant's rights. There is difficulty in understanding such a proposition or the supposed reason advanced to support it. It is not conceivable to us how a denial of liability under a contract and an offer to pay a reasonable charge for the use of the hydrants can be viewed as an act having the legal effect to impair the contract.

Again, it is argued in appellant's brief that the proposition to pay fifty dollars ($50) for the use of hydrants pending the litigation, coupled with the condition that the rights of the city should not be thereby prejudiced, possessed some mystical power by which it imparted to the resolution of November 7 the effect to annul the ordinance of 1886, and it is characterized as "a well-laid trap," which, if accepted, would be an acquiescence in the city's demands. 'Tis a fanciful fright of a diseased imagination, conjuring devils from the vasty deep of suspicion. "Methinks it is like a weasel." The legal proposition advanced has no better basis.

The insincerity of this apprehension is made manifest by reference to a letter which the mayor wrote to the water works company, which appears on page 68 of the record, where the proposition is made for a stipulation that the rights of the water company in the premises should not be impaired or waived by accepting the proposed payment of

fifty dollars ($50). (While the record shows this letter to be dated February 14, we are informed that the company did not receive it until the 15th.) Notwithstanding this, the bond in the case was not made and the writ was not issued until the 16th, nor was the writ put in the hands of the marshal until the 19th, and was served upon the 21st, on which latter day, for the first time, did appellee have any notice whatever of the proceedings.

The statement of counsel that the question of jurisdiction was decided by the trial judge upon the bill and the allegations and denials of the answer (*except in so far as the answer raised the jurisdictional question*) is simply not true.

We respectfully submit the foregoing views of our case to the court, and it is our pleasure to feel that they will receive all due and proper consideration.

MAGRUDER, BRYSON & DABNEY,
W. J. VOLLOR, *For Appellee.*

L. W. MAGRUDER,
Of Counsel.

Supreme Court of the United States.

No. 392.—October Term, 1901.

The Vicksburg Waterworks Company, Appellant, vs. The Mayor and Aldermen of the City of Vicksburg.	Appeal from the Circuit Court of the United States for the Southern District of Mississippi.

[April 7, 1902.]

The Vicksburg Waterworks Company, a corporation of the State of Mississippi, filed, in February, 1901, in the Circuit Court of the United States for the Southern District of Mississippi, a bill of complaint against the mayor and aldermen of the city of Vicksburg, a municipal corporation of Mississippi. To this bill the city filed a demurrer and certain special pleas, and subsequently moved the court for leave to withdraw the demurrer and pleas, and for leave to file an answer alleging that said answer embodied all the matters of defense which were set forth in said pleas and demurrer, and also a motion to dissolve a temporary injunction which had been theretofore granted.

On July 1, 1901, the court entered the following order:

"Coming on to be heard the motion to dissolve the injunction herein, and the defendant now having moved the court for leave to file the answer herewith presented and marked by the clerk as filed June 21, 1901, and to withdraw the pleas and demurrers filed April 30, 1901, it is ordered that leave be granted to file said answer and withdraw said pleas and demurrers, but that the question of the jurisdiction of this court to hear the matter in controversy, raised by said answer, shall be first presented and argued."

On July 3, 1901, the complainant moved the court to "require defendant to elect on which plea it will stand, whether on demurrer to the whole bill or on the answer." This motion was overruled, and on July 3, 1901, the court entered the following order and decree:

"This cause coming on to be heard upon the motion to dissolve the injunction heretofore issued in this cause, and the court now being advised in the premises, and it appearing that there is no Federal question involved in the controversy presented by the pleading, it is therefore ordered, adjudged and decreed that said injunction be, and the same is hereby, dissolved, and that the bill of the complainant be, and the same is hereby, dismissed, and that execution issue therefor for the cost in the case."

Thereupon the complainant moved the court to "continue the restraining order in force as granted until the appeal in this cause is heard by the Supreme Court of the United States or until the further order is granted by said court."

The following order was then entered by the court:

"Upon the appeal being allowed herein it is ordered that the temporary restraining order herein be continued until the 1st day of January, 1902, or if before then, until the decision of the appeal herein by the Supreme Court, upon condition, however, that the complainant diligently prosecute its appeal and file a motion at or before the next term of the Supreme Court to advance the appeal in this cause upon the docket of the Supreme Court of the United States, and upon the further condition that the injunction bond heretofore given in this case shall stand and continue in force for any additional liability which may be incurred by reason of this order, the principal and sureties upon said bond, now in open court consenting thereto. Ordered, adjudged and decreed this 3d July, 1901."

On the same day an appeal was allowed to this court, and on July 4, 1901, the following certificate was signed by the trial judge and filed:

"The final decree having been entered herein on the 3d day of July, 1901, dismissing this suit and the bill, and amended and supplemental bill therein, now, therefore, this court in pursuance of the second paragraph of the fifth section of the act of Congress, approved March 3, 1891, and entitled 'An act to establish Circuit Courts of Appeal and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes,' hereby certifies to the Supreme Court of the United States for decision the question of the jurisdiction alone of this court over this cause, whether this cause presents a controversy which involves a Federal question under the laws or Constitution of the United States.

"The only question which I considered and decided in dismissing this suit and the bills of complaint is whether a Federal question was involved upon the pleadings."

Mr. Justice SHIRAS delivered the opinion of the Court.

The sole question for our consideration is whether the bill, as originally filed and as amended, presented a Federal question. As the party plaintiff and the party defendant were both corporations and citizens of the same State, the Circuit Court of the United States could not take jurisdicton of the controversy between them, unless the complainant laid grounds for that jurisdiction by asserting rights arising under the Constitution or laws of the United States, and such assertion must appear in the complainant's statement of its own claim. (*Metcalf* v. *Watertown*, 128 U. S. 586; *State of Tennessee* v. *Planters' Bank*, 152 U. S. 454; *Blackburn* v. *Portland Mining Co.*, 175 U. S. 571.)

It is true that the learned judge, in his certificate to this court, inquires "whether a Federal question was involved upon the *pleadings*." And it is also true that the counsel for the respective parties have gone, in their briefs, into a discussion of questions of fact and law, as if the case were here on appeal from a final decree on the merits.

But our function, in the case before us on this certificate, is restricted to the inquiry whether, upon the allegations of the bill of complaint, assuming them to be true in point of fact, a Federal question is disclosed so as to give the Circuit Court jurisdiction in a suit between citizens of the same State. If we conclude, after an inspection of the bill, that a Federal question is thereby presented, we must reverse the decree of the Circuit Court below dismissing the bill, and direct that court to proceed in the orderly exercise of its jurisdiction to determine the controversy; if we fail to find such a question, the decree of the Circuit Court must be affirmed.

Addressing ourselves, then, to a consideration of the contents of the bill, original and supplemental, we encounter a very long and somewhat confusing narrative of the facts of the case. We do not think it necessary to state those facts in full in this opinion, but shall confine our attention to the allegations in which questions arising under the laws or Constitution of the United States are claimed to arise.

By an act of the legislature of the State of Mississippi, approved on the 18th day of March, 1886, the city of Vicksburg was authorized "to provide for the erection and maintenance of a system of waterworks to supply said with water, and to that end to contract with a party or parties who shall build and operate waterworks."

The city received competitive bids for the construction and maintenance of said waterworks, and on November 18, 1886, at a special meeting of the board of mayor and aldermen, a committee reported that the bid made by Samuel R. Bullock & Company, of New York was the best bid, and submitted the draft of an ordinance, entitled "An ordinance to provide for a supply of water to the city of Vicksburg, in Warren County, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates, successors and assigns, for a supply of water for public use, and giving the city of Vicksburg an option to purchase said works." This ordinance was then adopted, in terms as follows:

"SEC. 1. That in consideration of the public benefit to be derived therefrom the exclusive right and privilege is hereby granted for the period of thirty (30) years from the time that this ordinance takes effect, unto Samuel R. Bullock & Company, their associates, successors and assigns, of erecting, maintaining and operating a system of waterworks in accordance with the terms and provisions of this ordinance, and of using the streets, alleys, public squares and all other public places within the corporate limits of the city of Vicksburg, Mississippi, as they now exist or may hereafter be extended, and within such other territory as may now or hereafter be extended and within such other territory as may now or hereafter be under its jurisdiction, for the purpose of laying pipes, mains and other conduits, and erecting hydrants and other apparatus for conducting and furnishing an adequate supply of good wholesome water to the city of Vicksburg, Mississippi, and to its inhabitants for public and private use, and for making repairs and extensions to the said system from time to time during the period in which this ordinance shall be in force.

"The said Samuel R. Bullock & Company, their associates, successors and assigns, shall exercise the greatest care and diligence in the use of the said streets, alleys, public squares and other public places, and shall cause no unnecessary obstruction of, or interruption to, the public travel over or upon the same, or any injury to or interference with any pipes, mains, sewers, which may now be lawfully located beneath the surface thereof.

"The said Samuel R. Bullock & Company, their associates, successors and assigns, shall take every precaution to provide against danger to property, life and limb by reason of the exercise of the rights and privileges hereby granted, and shall cause all excavations and obstructions to be properly lighted and guarded at night, and after the completion of the purposes for which the said streets, alleys, public squares and other public places may be used, they shall be restored to their former condition as near as may be without unnecessary delay, and they shall at their own cost and expense relay their mains and pipes when made necessary by a change of grade in any street ordered by the board of mayor and aldermen of said city if there was no established grade for such street at the time said mains and pipe were laid. On failure to restore said streets, alleys, public squares and other public places as aforesaid, the mayor and aldermen of the city of Vicksburg may, on reasonable notice to them by any city officer, cause the same to be restored and recover the costs and expenses thereof from the said Samuel R. Bullock & Co., their associates, successors and assigns, in any court having jurisdiction of the amount.

"The said Samuel R. Bullock & Company, their associates, successors and assigns, hereby agree to hold the mayor and aldermen of the city of Vicksburg harmless from any liability which may result to it by reason of any violation of this section.

"SEC. 2. The general plan of the said system of waterworks shall be as follows:

"Mains.—The pipe system shall not consist of not less than twelve (12) miles of mains of sizes varying from sixteen inches (16) to six (6) inches in diameter. The pipe used shall be of the best quality of cast iron pipe and each pipe shall be tested at its place of manufacture to a pressure of three hundred (300) pounds to the square inch. All pipe shall be coated with Dr. Angus Smith's preservative varnish, and shall be laid and jointed by competent mechanics and in the best possible manner.

"The streets along which and at what points said mains shall be laid shall be first designated by the board of mayor and aldermen of the city of Vicksburg.

"Hydrants.—The hydrants shall be double-nozzle fire hydrants with nozzles fitted to connect with the hose couplings now in use by the fire department of said city of Vicksburg.

"The board of mayor and aldermen of the city of Vicksburg shall within thirty (30) days from the date of the final passage of this ordinance designate the points on the line of distributing mains at which the hydrants shall be erected.

"Gates and valves.—All the necessary gates and valves shall be provided and located at such points on the lines of mains as will enable certain districts to be cut off and isolated when repairs are needed without depriving other districts of their full supply.

"Pumps.—The pumping plant shall consist of two pumping engines each capable of pumping two millions (2,000,000) of gallons of water per

day of twenty-four (24) hours against the pressure needed to supply all parts of the pipe system with an abundant supply of water. They shall be so arranged as to be operated separately or together.

"Boilers.—The boilers shall be of ample capacity to operate the pumping engines and shall be so arranged as to be operated separately or together as may be required.

"Stand-pipe.—There shall be a stand-pipe or a reservoir of sufficient capacity and heighth or elevation to furnish an ample supply of water for consumption at the highest points along the line of the mains.

"Pump-house.—The pumps and boilers house shall be a substantial stone or brick building of ample size for the pumps and batteries of boilers. The smokestack will be of brick of the size needed to operate the boilers

"Source of supply.—The water shall be taken from such point as may be free from all sewerage contamination, and shall be good, wholesome water fit for all purposes of domestic or manufacturing consumption.

"SEC. 3. In consideration of the public benefit and the protection to property resulting from the construction of the said system of waterworks the mayor and aldermen of the city of Vicksburg hereby rent to the said Samuel R. Bullock & Company, their associates, successors. and assigns, not less than eighty (80) double-nozzle frost-proof fire hydrants for the aforesaid period of thirty (30) years at the annual rate of sixty-five ($65) dollars for each hydrant, to be payable semi-annually on the 15th days of January and July. After the first year of the operation of said waterworks the said city hereby rents not less than ten (10) hydrants in addition to said eighty (80) for the unexpired period of said thirty years; the first one hundred (100) hydrants shall be located on the original twelve (12) miles of mains at said annual rental of sixty-five ($65) dollars, payable as aforesaid and for the remainder of said period of thirty years unexpired at the time of placing each of said hydrants.

"The rental of all hydrants in excess of said one hundred hydrants hereafter erected on the line of distributing mains or on the extensions thereof as hereinafter provided at the request of the said mayor and aldermen of the city of Vicksburg shall be at the annual rate of fifty (50) dollars for each hydrant, payable as aforesaid, during the unexpired period of the said original term of thirty (30) years. Water shall be used from the said hydrants for the extinguishment of fires and necessary fire practice and for flushing sewers and gutters only, provided that for fire practice and flushing sewers no more than two hydrants shall be opened at one time and not more than once in each week.

"SEC. 4. Water shall be furnished free of charge to the public schools, and all other public buildings used exclusively for city purposes, and for filling public cisterns, and the city hospital shall also be supplied with water free by a supply pipe whenever the mains shall be laid within seven hundred and fifty (750) feet of said hospital. And water shall also be supplied free for six (6) drinking fountains with openings for man and beast and one public fountain to be erected by the said Samuel R. Bullock & Co., in such place on the line of mains as the board of mayor and aldermen of the city of Vicksburg may direct.

"SEC. 5. That said Samuel R. Bullock & Company, their associates, successors or assigns, may procure the organization of a waterworks corporation under the laws of any State and may assign to it all the rights and privileges acquired hereunder. Provided, that such assignment shall not

invalidate or effect the bond required by section (7) seven hereof and no assignment thereof shall be valid unless such assignee shall in writing to said board of mayor and aldermen accept this ordinance and become bound by its terms and obligations. And the said board of mayor and aldermen shall pass and enact such further and other ordinance and do and perform such other acts, including the repassage of this ordinance, in favor of the said corporation as may be necessary to vest in the said corporation the rights and privileges hereby granted.

"SEC. 6. Upon the completion of the construction of the said system of waterworks the said Samuel R. Bullock & Company, their associates, successors and assigns, shall notify the mayor and aldermen of the city of Vicksburg to that effect in writing and thereupon submit the works to such a test as will show the capacity of the works to be sufficient to throw four (4) fire streams through one hundred feet of two and one-half inch hose and one-inch nozzle from four (4) different hydrants a stream not less than fifty (50) feet high at the highest location on which any of such hydrants are located. On the satisfactory performance of this test the said board of mayor and aldermen shall formally accept said system if constructed in accordance with the terms of this ordinance.

"SEC. 7. Within fifteen days after the day that this ordinance takes effect the said Samuel R. Bullock & Company, their associates, successors or assigns, shall file their written acceptance thereof, binding themselves to its terms and obligations, in the office of the city clerk accompanied by their bond in the penal sum of ten thousand ($10,000) dollars with two or more sufficient sureties to be approved by said board of mayor and aldermen executed to the mayor and aldermen of the city of Vicksburg and conditioned for the faithful compliance with the terms of this section. On failure to file such bond within said time this ordinance shall become null and void. But if said board shall not approve a bond so filed, said board may in its discretion grant additional reasonable time within which to file another bond.

"The construction of the said system shall be commenced within sixty days after this ordinance takes effect, and said system shall be completed within eighteen (18) months after the commencement of the construction thereof; provided however, that the time during which the said Samuel R. Bullock & Company, their associates, successors or assigns, are delayed by floods, act of God or the public enemy, legal proceedings for the maintenance or defense of their legal rights or in the acquisition of property or right of way, or by reason of any other causes whatever beyond their control, shall form no part of the time limited in this ordinance for the performance of any act required by the terms hereof to be done by them, but they shall use all due diligence to remove any such obstructions or delays.

"SEC. 8. The said board of mayor and aldermen of the city of Vicksburg shall from time to time pass and enact ordinances under suitable penalties providing for the protection of said works from damage, fraud or imposition.

"SEC. 9. At the expiration of each period of ten years after this ordinance takes effect, the mayor and aldermen of the city of Vicksburg shall have the right and privilege to purchase the said system of waterworks, provided they notify the said Samuel R. Bullock & Company, their associates, successors or assigns, of their intention to do so, at least one year before the expiration of the said period of ten years.

"The value of the said system shall be ascertained as follows: The said Samuel R. Bullock & Company, their successors, associates and assigns, and the board of mayor and aldermen of the city of Vicksburg shall severally appoint one person, the two appointees shall choose a third, and the three persons thus chosen, who shall be hydraulic engineers, shall constitute a board to determine the value of the said system of waterworks. None of the board shall be residents of the said Warren County. The said mayor and aldermen of the city of Vicksburg shall within sixty days after the said board have rendered its decision, pay the amount awarded in cash. A failure to so pay the award or to give notice of intention to purchase as above provided shall operate as a waiver of the right to purchase until the expiration of the next succeeding period of ten years.

"SEC. 10. The said Samuel R. Bullock & Company, their associates, successors and assigns, shall make extensions to their line of mains whenever called upon so to do by the mayor and aldermen of the city of Vicksburg. Provided, however, that said extensions shall be not less than five hundred feet in length and that one public hydrant shall be located on each five hundred feet or major portion thereof; and further provided, that two-thirds of the residents on the line of such extension shall agree to take water at the established rates for a period of at least two years, but the said Samuel R. Bullock & Company, their associates, successors and assigns, may voluntarily make such extensions from time to time as they may deem necessary.

"SEC. 11. After the works are put in operation, if at any time the pressure gauges located at the points hereinbefore named should indicate a pressure of less than twenty pounds (20) on the distributing mains at the highest point of elevation for the period of two weeks in succession then the rentals for the use and employment of the hydrants for the purposes aforesaid shall cease until the standard of pressure in this section provided shall be attained; provided however, if the pressure indicated as aforesaid should be less than twenty pounds for two calendar months in succession then all the rights, and privileges of the said Samuel R. Bullock & Company, their associates, successors and assigns, acquired by virtue of this ordinance shall at the option of said board of mayor and aldermen made in writing cease, determine and be null and void. But nothing herein contained shall be so construed as to prevent the said Samuel R. Bullock & Company, their associates or assigns, from temporarily shutting off the water from its said system or any portion thereof, for the purpose of making repairs or extensions to the same; and no liability shall attach to the said Samuel R. Bullock & Company, their associates, successors and assigns, for the suspension of the supply of water; provided, the repairs or extensions are made and the water turned on again without unnecessary delay. But the city shall not be liable to pay the rental for any hydrant during such time as the proper supply of water cannot be procured therefrom.

"SEC. 12. Be it further ordained, That as part of the consideration for the performance of the duties and obligations hereby imposed on the said Bullock & Co., their associates, successors and assigns, the said waterworks and the property and business pertaining thereto and employed in and about said system shall be exempt from all municipal taxation during the first five years of their operation, and all of the property and business pertaining to and employed in and about said system of waterworks shall

thereafter during each year for the balance of the period of this contract be assessed for taxation by said city at a valuation not to exceed the sum of fifty thousand dollars ($50,000).

"SEC. 13. The said Samuel R. Bullock & Company, their associates, successors or assigns, shall have the right to make all needful rules and regulations governing the consumption of water, the tapping of pipes and general operation of the works, and to make such rates and charges for the use of said water as they may determine; provided, that said rates and charges shall not exceed fifty cents for each one thousand gallons of water.

"SEC. 14. Be it further ordained, That for the purpose of paying the obligations and liabilities of the said mayor and aldermen of the city of Vicksburg, which shall accrue to the said Samuel R. Bullock & Company, their associates, successors or assigns, by virtue of the terms and conditions of this ordinance, the said mayor and aldermen of the city of Vicksburg or other duly constituted municipal authorities shall annually levy and cause to be collected upon the taxable property of said city a special tax, to be known and designated as the waterworks tax, sufficient to meet and pay all of said obligations and liabilities during the continuance of this contract and until all of said obligations and liabilities shall be paid and discharged.

"SEC. 15. Be it further ordained, That this ordinance shall take effect from and after its approval by the mayor. Ordained this 18th day of November, 1886."

On March 1, 1887, Samuel R. Bullock & Company assigned and transferred, under and by virtue of the fifth section of the aforesaid ordinance, all their rights and privileges acquired under the ordinance to the Vicksburg Water Supply Company, incorporated under the laws of the State of Mississippi, and the said company accepted in writing the said ordinance.

The bill further alleges the construction of the said water plant, in accordance with the specifications contained in the ordinance, and the city accepted the same; that since the completion and acceptance of said waterworks, during a period of fourteen years up to about July, 1900, the said company fully complied with all the terms of the ordinance, and no complaint was made by the city with respect to the execution of the company's part of the contract, and the city, without question, paid to the water company the semi-annual payments stipulated for in the ordinance; that on the 8th day of August, 1900, a mortgage that the said company had previously made, and which had fallen into default, was foreclosed, and all the franchises, ordinances, contracts and property described and conveyed in said mortgage deed were sold to the Vicksburg Waterworks Company, a corporation under the laws of the State of Mississippi, doing business in the city of Vicksburg, and which became the owner of said waterworks property and entered into the operation of the same; that on October 18, 1900, the said The Vicksburg Water Supply Company executed a quitclaim deed to the said The Vicksburg Waterworks Company, conveying and asisgning all rights, titles and interest it might have or might thereafter

acquire in said waterworks property, franchises, ordinances and contracts; that the Vicksburg Waterworks Company gave the city notice in writing of the said purchase and assignment, with a written acceptance of the terms and provisions of the said ordinance; that since the completion and acceptance of the said waterworks the city continuously received and used the water furnished by said waterworks, during a period of abut fourteen years; and said water has at all times been and now is good and wholesome for public and private use, and adequate in supply for the needs of the city and its inhabitants; that said water so furnished from the time the city first received and accepted the same up to the present time is and has at all times been the same character and supply of water, and is and at all times has been in accordance with the said ordinance and contract entered into with said city by said S. R. Bullock & Company, the said Vicksburg Water Supply Company, and the said Vicksburg Waterworks Company, and that the pressure maintained has at all times been and is now greater than required by said ordinance and contract.

Upon these allegations, the appellants claim that a contract was entered into between the city and S. R. Bullock & Company and their assigns, the Vicksburg Water Supply Company and the Vicksburg Waterworks Company, which contract still exists and is within the protection of the Constitution of the United States.

The matters and things which are alleged by the appellants to impair the obligation of said contract and to destroy their property rights are mainly as follows:

On March 9, 1900, the legislature of Mississippi passed an act entitled "An act to authorize the mayor and aldermen of the city of Vicksburg to issue bonds to the amount of $375,000, to purchase or construct, equip and maintain, a waterworks system; construct and establish a sewerage system; to purchase grounds for, erect and equip a city hall; construct the necessary buildings for a medical college, and for other purposes;" by which act, the bill alleges, the legislature assumed to annul and abrogate the aforesaid ordinance and contract the city entered into with said Bullock & Company and their assigns in this, that, by reason of said ordinance and contract, said city has no right within the said period of thirty years to engage in the business of supplying water to the inhabitants of said city in competition with said Bullock & Company or their assigns, notwithstanding which said act authorizes and permits said city to construct and maintain waterworks for said purpose, if unable to buy the waterworks of said Vicksburg Water Company at the arbitrary and inadequate price fixed by the said legislative act. The bill further alleges that, in pursuance of said act, and as required by its terms and conditions, an election was held in said city on the 3d day of July, 1900, at which it was voted, by a majority of the votes cast, that said city should issue its bonds in the sum of $150,000,

to buy or construct waterworks for said city; that, on the 7th day of November, 1900, the city passed a resolution and ordinance as follows: "Resolved, that the mayor be and is hereby instructed to notify the Vicksburg Waterworks Company that the mayor and aldermen deny any liability upon any contract for the use of the waterworks hydrants; that from and after August, 1900, they will pay reasonable compensation for the use of said hydrants; that the city attorney take such action as shall be necessary to determine the rights of the city in the premises." The bill further alleges that on December 7, 1900, the city filed a bill in the Chancery Court of the county of Warren, State of Mississippi, against the Vicksburg Water Supply Company and the Vicksburg Waterworks Company, averring, among other things, that the contract entered into with Samuel R. Bullock & Company was null and void, and the attempt by said mayor and aldermen was a gross abuse of their rights and powers; that the said mayor and aldermen had no right to make a contract for so long a period as thirty years, and beyond their official terms to bind the constituted authorities to pay rents for the said hydrants as therein stipulated; that the rates prescribed in said contract for the use of said hydrants and the rates charged by said company against domestic consumers are exorbitant and illegal, and said board exceeded its power and authority in making a contract stipulating during the period aforesaid for said rates; that the said mayor and aldermen, at a meeting held on the 5th day of November, 1900, resolved and declared that "the said board no longer recognized any liability, under said contract, to said company, by reason whereof said complainants say that said contract no longer exists; that they are entitled, as against the Vicksburg Water Supply Company, to have said contract canceled and annuled, and as against the Vicksburg Waterworks Company to a decree that said company have never acquired any rights in or to said contract, or if mistaken in this, by reason of the matters and things stated, they are entitled to have the same annuled and canceled; praying that the said city may have said relief and such other and further relief as may appear just and proper."

The present bill further alleges that said suit in the chancery court was brought on petition to the Circuit Court as involving a Federal question, and that the same is now pending in that court upon a motion to remand.

The bill prays for an injunction to restrain the defendant from assuming to abrogate and take away the franchises and contract rights of the compiainant, and from attempting to coerce the company to sell its works to the defendant for an inadequate price, and that said act of the legislature of Mississippi, adopted on March 9, 1900, and said resolution and ordinance adopted and passed by said city on the 7th day of Nsvember, 1900, be declared to impair the obligations of said contract between said city and said Bullock & Company and their assigns, and to cast a cloud upon

the title, franchises and rights of complainant, and said act, ordinance and resolution, and each of them, are alleged to be in contravention of the Constitution of the United States in this, that they impair the obligations of said contract between said city and said Bullock & Company and their assigns.

It cannot be seriously contended that, under the act of March 18, 1886, authorizing the city to provide for the erection and maintenance of a system of waterworks, and to contract with a party or parties to build and operate waterworks, and under the ordinance of the city of November 18, 1896, providing for a supply of water to the city and its inhabitants by contracting with Samuel R. Bullock & Company, their associates, successors and assigns, and the acceptance of said ordinance by Samuel R. Bullock & Company, no contract was entered into. The subject-matter of the contract was within the powers of the city to make; the terms were explicitly set forth in the ordinance; the works erected were approved by the city, and the respective obligations created by the contract were duly complied with without question or complaint, for a period of fourteen years.

After the lapse of that long period and the continuous acquiescence of the city in the contract as a valid and subsisting one, the city, according to the allegations of the bill, now insists that the said contract was invalid because in excess of its powers to contract, and is proposing to borrow money to erect and maintain waterworks of its own, and become a competitor with the complainant for the custom of the consumers of water. And the question for our consideration is whether the subsequent legislation, State and municipal, set forth in the bill, impairs the contract rights of the complainant within the protection of the Constitution of the United States.

As respects the act of March 9, 1900, it is contended by the complainant that it is unconstitutional for several reasons, chiefly because it places an arbitrary valuation on the property of the complainant, and because it purports to authorize the city to build and operate waterworks of its own in derogation of the contract rights of the complainant.

Whether this act of the legislature of Mississippi is, in its terms, subject to those objections, or whether it may be regarded as merely authorizing the city to proceed in such a manner as not to conflict with existing contract obligations, we need not determine at this stage of the case, because we think that the ordinance of the city of November 7, 1900, whereby the mayor was instructed to notify the waterworks company that the mayor and aldermen deny any liability upon any contract for the use of the waterworks hydrants, and the subsequent action of the city in holding an election to authorize the issue of bonds to buy or construct waterworks of its own, and in refusing to pay the amount due and payable under the terms of the ordinance, do not present the mere case of a

breach of a private contract to be remedied by an action at law, but disclose an intention and attempt, by subsequent legislation of the city, to deprive the complainant of its rights under an existing contract; and that, therefore, unless the city can point to some inherent want of legal validity in the contract, or to some such disregard by the waterworks company of its obligations under the contract as to warrant the city in declaring itself absolved from the contract, the case presented by the bill is within the meaning of the Constitution of the United States and within the jurisdiction of the Circuit Court as presenting a Federal question.

The objections urged in the brief of the appellee to the validity of the contract, because it undertakes to bind the city for a period of thirty years, because an attempt to barter away the legislative power of the city authorities, and because creating an indebtedness in excess of the charter limits, are those that were considered at length in the similar cases of *Walla Walla* v. *Walla Walla Water Company*, (172 U. S. 1,) and *Los Angeles* v. *Los Angeles City Water Company*, (177 U. S. 558,) and were in those cases held to be untenable. However, we do not wish to be understood as now determining such questions in the present case, for we are only considering whether or not the Circuit Court had jurisdiction to consider them.

It is further contended that the bill does not disclose any actual proceeding on the part of the city to displace complainant's rights under the contract, that mere apprehension that illegal action may be taken by the city cannot be the basis of enjoining such action, and that therefore the Circuit Court did right in dismissing the bill. We cannot accede to this contention. It is one often made in cases where bills in equity are filed to prevent anticipated and threatened action. But it is one of the most valuable features of equity jurisdiction, to anticipate and prevent a threatened injury, where the damages would be insufficient or irreparable. The exercise of such jurisdiction is for the benefit of both parties; in disclosing to the defendant that he is proceeding without warrant of law, and in protecting the complainant from injuries which, if inflicted, would be wholly destructive of his rights.

It may be said that the action of the Circuit Court in dismissing the bill may have been based on the fact that the city had proceeded by a bill filed in the Chancery Court of Mississippi against the waterworks company before the present suit was instituted. But the learned judge does not, in his certificate, suggest such a question, and the bill avers that the record in the city's suit is still pending in the Circuit Court on a motion to remand. Whether the city's complaint in the State court disclosed a Federal question, and what, if properly removed to the Circuit Court for that reason, the course of the Circuit Court ought to be in respect to the formal disposition of the cases, are matters not before us for determination.

Nor can we consider allegations made in behalf of the city in its answer as to misconduct of the waterworks company, in respect to which no issue was found nor proofs taken in the court below. They must be determined by the proper tribunals, which will pass upon the merits of the case.

We think this cause presents a controversy so arising under the laws and Constitution of the United States as to give the Circuit Court jurisdiction, and therefore the judgment of the Circuit Court is reversed, and the cause remanded to that court to take proceedings therein according to law.

True copy.

Test:

Clerk Supreme Court, U. S.